

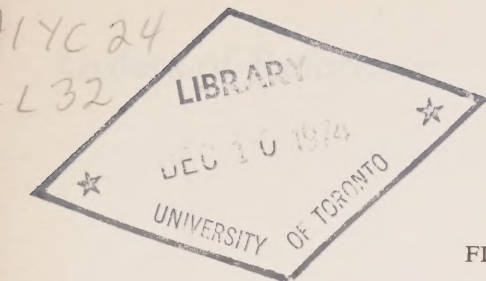
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Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 1

TUESDAY, NOVEMBER 12, 1974

Complete Proceedings on Bill S-2, intituled:

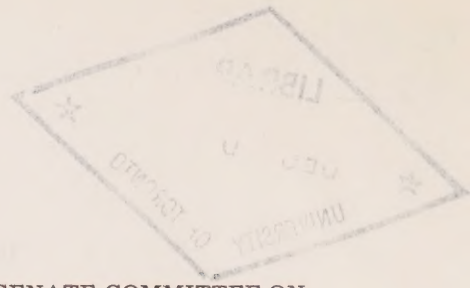
“An Act to amend the Supreme Court Act and to make related amendments to the Federal Court Act”

and Complete Proceedings on Bill S-3, intituled:

“An Act to provide for a continuing revision and consolidation of the statutes and regulations of Canada”

REPORT OF THE COMMITTEE

(Witnesses and Appendices: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Walker—(20)

**Ex officio* member

(Quorum 5)

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, October 22, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Stanbury, seconded by the Honourable Senator Greene, P.C., for the second reading of the Bill S-3, intituled: "An Act to provide for a continuing revision and consolidation of the statutes and regulations of Canada".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Petten, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Extract from the Minutes of the Proceedings of the Senate, October 23, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator McIlraith, P.C., for the second reading of the Bill S-2, intituled: "An Act to amend the Supreme Court Act and to make related amendments to the Federal Court Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Lamontagne, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate

Minutes of Proceedings

Tuesday, November 12, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:30 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Fergusson, Flynn, Godfrey, Laird, Neiman, Riel and Robichaud. (9)

Present but not of the Committee: The Honourable Senators Connolly (*Ottawa West*) and Greene.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the consideration of Bill S-2 intituled: "An Act to amend the Supreme Court Act and to make related amendments to the Federal Court Act".

The following witnesses were heard in explanation of the Bill:

Mr. T. B. Smith, Q.C., Director,
Constitutional, Administrative and International Law
Section,
Department of Justice;

Mr. E. Neil McKelvey, Q.C., Immediate Past President,
Canadian Bar Association;

Professor William R. Lederman, Q.C.,
Faculty of Law, Queen's University, and Research
Officer,
Canadian Bar Association.

At 12:30 p.m. the Committee adjourned until 2:00 p.m.

At 2:00 p.m. the Committee resumed.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Croll, Fergusson, Flynn, Godfrey, Laird, Neiman, Riel and Robichaud. (10)

Present but not of the Committee: The Honourable Senators Connolly (*Ottawa West*) and Greene.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard with respect to Bill S-2:

Mr. T. B. Smith, Q.C.,
Director, Constitutional, Administrative and International Law Section,
Department of Justice;

Mr. E. Neil McKelvey, Q.C., Immediate Past President,
Canadian Bar Association;

Professor William R. Lederman, Q.C.,
Faculty of Law, Queen's University, and Research
Officer,
Canadian Bar Association.

On Motion of the Honourable Senator Laird it was *Resolved* to report the said Bill without amendment.

On Motion of the Honourable Senator Flynn it was *Resolved* to print in this day's proceedings the "Report of the Special Committee of the Canadian Bar Association on the Caseload of the Supreme Court of Canada", and letters dated June 19, 1973 and September 13, 1973 by the President of the Canadian Bar Association to the Honourable Otto Lang, Minister of Justice. They are printed as Annexes "A", "B" and "C" respectively.

At 2:50 p.m. the Committee recessed until 3:30 p.m.

At 3:30 p.m. the Committee resumed.

The Committee proceeded to the consideration of Bill S-3 intituled "An Act to provide for a continuing revision and consolidation of the statutes and regulations of Canada".

The following witnesses, representing the Department of Justice, were heard in explanation of the Bill:

Mr. R. L. du Plessis, Legal Adviser;

Mr. R. W. Ryan, Assistant Deputy Minister
(Legislation).

On motion of the Honourable Senator Flynn it was *Resolved* to report the Bill without amendment.

At 3:55 p.m. the Committee adjourned to the call of the *Chairman*.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Reports of the Committee

Tuesday, November 12, 1974.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill S-2, intituled: "An Act to amend the Supreme Court Act and to make related amendments to the Federal Court Act" has, in obedience to the order of reference of Wednesday, October 23, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

H. Carl Goldenberg,
Chairman.

Tuesday, November 12, 1974.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill S-3, intituled: "An Act to provide for a continuing revision and consolidation of the statutes and regulations of Canada" has, in obedience to the order of reference of Tuesday, October 22, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

H. Carl Goldenberg,
Chairman

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, November 12, 1974

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-2, to amend the Supreme Court Act and to make related amendments to the Federal Court Act, met this day at 10.30 a.m. to give consideration to the bill.

Senator H. Carl Goldenberg (Chairman) in the Chair.

The Chairman: Honourable senators, the bill before us this morning is Bill S-2, An Act to amend the Supreme Court Act and to make related amendments to the Federal Court Act.

I am going to ask the committee which procedure it prefers. We have as witnesses: Mr. T. B. Smith, of the Department of Justice; and Mr. Neil McKelvey and Professor Lederman, of the Canadian Bar Association. Would the committee like Mr. Smith to make a general statement on the bill, after which he could answer questions?

Hon. Senators: Agreed.

The Chairman: Is that satisfactory to you, Mr. Smith?

Mr. T. B. Smith, Director, Constitutional, Administrative and International Law Section, Department of Justice: That is satisfactory, Mr. Chairman.

The Chairman: Would you proceed, Mr. Smith?

Mr. Smith: Mr. Chairman, when you asked me to make a general presentation I was about to say that I did not really have any presentation to make, but I got started on my way up to the front here before I could do that.

Perhaps I could say a few words about the bill, and then there will probably be some questions that you would like to direct to me, and probably more pertinent questions to the representatives of the Canadian Bar Association, because the essence of this bill is really to implement a report of a special committee of the Canadian Bar Association that was submitted to the Minister of Justice about a year and a half ago. That special committee was constituted, as you know, at the request of the Minister of Justice by the Canadian Bar Association. The essential recommendation the Canadian Bar Association made was that henceforth all appeals to the Supreme Court ought to be by way of leave. This recommendation was made to deal with the problem that was at the root of the minister's request, namely, the work load of the court.

The work load of the court has been increasing over the years and the stage has now been reached when it is difficult for the court to deal with the number of cases that are coming before it, and coming before it as of right under the present provisions of the act. The issue was really how to deal with that overload, and the recommendation was that henceforth cases ought to come to the court by leave of the court. There are in the legislation a few minor

housekeeping provisions, but that is the major object and purpose of the legislation, to deal with this overload.

I might say that out of curiosity I checked with the court to determine the state of its case and this term. I was informed that at the beginning of the term there were 44 remanets— that is 44 cases from the previous session. While that is perhaps not as many as in one or two previous terms, it is quite a few by the standards of the court. I gather that that list of remanets will be completed shortly, and only then will the court be able to get on with some 120 cases that are inscribed for the present term. That will give you some idea of the current workload of the court, particularly bearing in mind that the recommendation of the special committee was that an ideal workload would be in the neighbourhood of 120 cases.

Mr. Chairman, I do not know whether there are any special aspects with which you want me to deal at this time. I would certainly be prepared to answer any questions or, if you wish, to discuss any of the provisions of the bill now. That is the setting for the legislation, and certainly I do not think it is, by the standards of legislation today, complicated legislation. It is directed essentially to this one purpose.

Senator Connolly: Mr. Chairman, I think Mr. Smith might simply state for the record, that, even though many cases are appealed to the court as of right, there is now provision for applications for leave to appeal in other cases that cannot go there as of right.

Mr. Smith: Yes, senator. Essentially, under the present provisions you can get to the court in two basic ways. The first is that if you have a case involving \$10,000 or more, as the law stands now you have a right to take that case to the Supreme Court. If your case does not involve \$10,000, the other major way is to apply to the court for leave to appeal, and in certain cases where there is a question as to whether or not there is \$10,000 involved that course is followed. It is also followed in cases where it is quite clear that there is not \$10,000 involved. Those are the two main avenues. There is, of course, still the avenue of obtaining leave at the provincial appeal court level. But that, according to the findings of the special committee, is used less and less as a matter of practice today.

Does that answer your point, Senator Connolly?

Senator Connolly: Yes. I just wanted to have it on record as a sort of general statement.

The other point is that you say there are 40 remanets and 120 cases inscribed at this time. Are those 120 cases just for the fall term? Will there be more inscribed for other terms?

Mr. Smith: Senator Goldenberg has just asked me whether I, in fact, said there were 120 cases. My information, as of this morning—and I have not checked this out—is that there are 120 cases inscribed for the fall term.

Senator Connolly: Is that in addition to the 40-odd remanets?

Mr. Smith: That is correct. Now, senator, I have verified that information. I just obtained that in a brief telephone call this morning. My information is that the feeling of the person to whom I talked at the court was that the pressure was pretty heavy right now.

Senator Connolly: That is a total of 160 cases which, presumably, are to be heard by the court in the fall term.

Mr. Smith: Theoretically.

Senator Connolly: But, in fact, the record of the court—which is about the same as it is in the United States—is that they dispose of about 125 cases a year. Is that not so?

Mr. Smith: According to the special committee report, that is correct. On average there are about 100 to 125 cases disposed of.

Senator Connolly: So that one year from now we are likely to have 40 more remanets.

Mr. Smith: My impression is that while it goes up and down slightly there is an increasing pressure, an increasing number. In other words, if we were to take a number of years to look at this situation, the graph would show a rising trend. It may be that in a subsequent session there might be a few less remanets, but in the next subsequent session it will bob up even higher.

My impression from the conversation I had this morning was that the problem is indeed more urgent now than it has been in past years. The pressure is still there and they are feeling it even more strongly.

One other element in this, I might say, is that it is a little difficult to talk about numbers because one case may take half an hour or an hour whereas another case may involve a week. There are not too many of those, but it often depends on the kind or type of cases with which the court is dealing as to how long they take. Therefore, a number is not always an accurate reflection. It may be, for example, that 44 cases can be gone through fairly quickly because they are short cases, whereas in another year only 30 can be dealt with because they are long cases. The general feeling is, however, that now the problem is just as acute as it was at the time the committee report was prepared.

Senator Laird: What is the situation with respect to the right of appeal from the Federal Court, formerly the Exchequer Court, in tax cases? My recollection is that there was no great restriction on appeals. I was involved in two or three appeals, and I am trying to recall from my experience whether or not there was any monetary limit in the Federal Court or the Exchequer Court. It seems to me that I got there fairly easily two or three times without having a large amount of money at stake. Can you tell us what the present situation is?

Mr. Smith: The present situation, senator, is exactly the same as in respect of appeals from provincial courts: namely, there is a monetary minimum of \$10,000—and in tax cases these days that may not be too considerable an amount.

I should point out that the provisions for appeal are contained in the Federal Court Act itself, and it is proposed in this bill to amend those provisions to make them precisely parallel with the provisions that are proposed for appeals from the courts of appeal in the various provinces.

So you have an exactly parallel situation. The only difference is that the Federal Court Act itself contains the rules and they are not in the Supreme Court Act.

Senator Laird: That brings it back. Thank you. I guess I must have had wealthier clients than I remember.

The Chairman: Go back and look at your fees!

Senator Buckwold: Mr. Chairman, from the point of view of the general public the major concern of this bill is the question of cases of importance—

The Chairman: Public importance.

Senator Buckwold:—cases of philosophical import or public importance or of major significance as to warrant decision. I think more and more matters of principle will have to be decided by the court.

My question is: Who makes the decision as to whether or not the case will be heard? Is it the entire court or is it a committee of the court? How does that work in fact?

Mr. Smith: The quorum for applications for leave to appeal is three judges, in the normal case. That is provided for in the Supreme Court Act at present. I would assume that, particularly in the beginning when it is a question of really establishing the criteria or ground rules—you know, “What is public importance?” because this is the essence of the matter—there may well be a broader consideration on the part of the court; but, in terms of the law, three members of the court sit and hear applications for leave to appeal in accordance with the act as it now stands, and we propose no change in that.

Senator Buckwold: Is there any appeal from those three? In other words, could someone then ask that the whole court consider the right of appeal?

Mr. Smith: I have not considered that particular question, but I think the answer to that is no.

Senator Connolly: Is not the answer to that, Mr. Smith, that the section in question states that the quorum of three is in fact the court?

Mr. Smith: Having reference to section 45, which is the provision in question, senator, “three judges” is the specific provision there. Three judges of the court constitute a quorum of the court and my reading of that would be that when the three judges speak on that particular subject they are speaking as the court, because they are the quorum of the court.

Senator Buckwold: I presume, therefore, that most decisions would be made by three, that you would not have the whole court, just as a matter of practice.

Mr. Smith: That is correct, although that is a matter of practice for the court. It may well be that the court retires to consider the question and it may not be beyond one's imagination that they discuss general principles with other members of the court.

Senator Buckwold: Do you not feel that there should be some right of an appellant who is seeking to be heard to at least have the opinion of the entire court before a decision is made to accept or reject the application?

Mr. Smith: I would answer that in two ways. The first way is that at the present time three judges decide essentially the same question in all cases other than those

involving a monetary minimum. The second thing that I should say to that is that this constitutes a second appellate level. In other words, the litigants have already had a trial; they have already had an appeal, either in the Federal Court or in one of the provincial appeal courts; and what we are dealing with here is a second level of appellate review. So it is not quite the same thing as somebody not having had his opportunity to appeal. What he is seeking here is the opportunity to appeal to the Supreme Court, and it seems to me that it is perfectly appropriate in those circumstances that three judges of that court, presumably familiar with the criteria applied by the court and by other members of the court, should decide whether that appeal is one which ought to be heard by the court.

Senator Buckwold: At the present time you can appeal on the basis of a claim of over \$10,000 or by leave of the court. We are now moving into the situation where in all cases the determination will be by leave of the court, basically. Are there many instances of the court rejecting such an application for leave at the present time—that is, under the present act?

Mr. Smith: I am perhaps not the best person to speak to this, because Professor Lederman has done a very detailed study; but his figures established, I think, that it is in the neighbourhood of 18 per cent that are granted at the present time. Now, I may be wrong. You will be able to seek better and more precise information from him. Over the years, however—and this is another point to be borne in mind—the percentage of leaves granted seems to be dropping a little, and it must be remembered, as things now stand, that this is the only area where the Supreme Court has any degree of control over its own workload. This perhaps is not the best situation to have, in which these applications for leave, almost because of pressure of work, have to be kept within very strict limits; because those may be the very kinds of questions—indeed, in some cases those are the very kinds of questions that ought to be heard by the court, and that the court itself feels that it should hear.

Senator Buckwold: What I am getting at is that from the point of view of the general public questions of very real social significance should not be rejected out of hand in their application to the court to be heard. I think this might worry some people.

Mr. Smith: Well, if I may just continue for a moment with the point that I was trying to make—that is, that the court ought to have, under the new system, a greater ability to deal with those very questions than it has now—assuming some of them are in the gamut of applications that are coming, and only 17, 18, 19 per cent are being accepted to be heard by the court, then it may well be at the present time that otherwise meritorious cases are not getting there. One would hope that they all are, but it could be that some of them are not; and under the new system, hopefully, the court will not only be able to control its workload, but also hear those cases which it feels ought to be heard which are of public importance.

Senator Flynn: Mr. Chairman, I would like to come back to the question of the formula used by the new section 41, or the one which will be enacted, to provide for the court to decide whether to accept or reject an application for leave. The words are:

... by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in such question ...

I suggest to the witness, first, that this is rather vague, and if I understand him correctly he suggests that the interpretation of these words will flow from a body of jurisprudence that will be established gradually by the court. Is that correct?

Mr. Smith: That is essentially so. If I may make one point here, which I have not made before, it is that there are really three criteria in that section, when it is read closely. While we have been talking about public importance—and that is really the essence of the whole thing—there are three criteria. This is drawn in such a way, I would suggest, as not to limit the court, because there may be cases that everybody would consider ought to be heard by the court, and we did not want to circumscribe the court. On the other hand—

Senator Flynn: That is quite obvious.

Mr. Smith: —there are three definite circumstances in this provision as it now stands, so that while I would agree with you, I just wanted to point out that there are some criteria there.

Senator Flynn: Yes; but I would suggest to you that practically any case would fit into any of these three—if you want to say there are three—criteria here. Practically any case that I have seen would fit, because it is of public importance, like a constitutional problem, or important because it is an issue in law, and any issue in law is important. I would therefore suggest to you that any case may qualify for leave to appeal to the Supreme Court under this test. I agree that perhaps it is better not to limit the court, but my problem is that if the public generally has to wait for a body of jurisprudence to be built under these terms, we will be in the dark for many years, and I was wondering if there was not another way of trying to solve this more quickly—for instance, if the court would become more precise, and would say, “Our interpretation of this will be as follows.”

The Chairman: Do you think the court could state that right at the outset?

Senator Flynn: Well, it could say that on the first application for leave, certainly. Presently, as the witness knows, leaves are granted or rejected without any reasons being given. We do not know. As far as the present possibility of obtaining leave is concerned, we are completely in the dark, and any judge can say, “Well, I consider this to be important. I grant leave.” Or, “I do not consider this case qualifies,” and that is the end of it. We just do not know. I am quite sure this is the experience of lawyers going before the Supreme Court.

Mr. Smith: If I may comment on that, senator, I do not think there would be any disagreement that it is important, and will be important, that in so far as is possible there ought to be some criteria, some ground rules, that people can look to to know whether they ought to attempt, by applying for leave, to appeal to the Supreme Court. On the other hand it is very difficult to write down any criteria that will not circumscribe the court in a way that all would agree would not be limiting; in other words, that would not pose real problems for the court in unusual cases.

The special committee's recommendation was that this be left to judicial discretion. I think the wording of this particular proposed amendment goes slightly beyond that, in the sense that I have suggested, namely, that there are

at least three cases that are set out. I think that it is to be expected that the Supreme Court will do this, because I am sure the judges of that court are well aware of this particular problem. It will be a fundamental problem for the court if this new system goes in at its inception. We are not completely without precedent. There are some old precedents.

Senator Flynn: Yes, but whether they apply or not is the question.

Mr. Smith: Yes; but the point is, at least on my admittedly rather cursory reading of them, that they really go along the line of public importance. Where there is an issue, for example, of importance between two litigants, but which has no other real importance in terms of law or in terms of the general public, then the court will be in a position to say, "No, this is not a matter which we need to hear"; and that sort of trend can be found in the older cases. I suppose my answer to your question, however, is that it is a problem. It is one that there is no easy answer to, and our preference has been, and the bill reflects it, to leave a broad discretion in the court as proposed by the special committee, setting out, to the extent that we could, the cases in which it would exercise that discretion.

Senator Flynn: But the point I want to make is that if we do not know exactly the criteria which the court will follow, the purpose of this bill, which is to lighten the burden of the court, will be completely defeated, because people will apply in all cases because they want to know exactly what is going to happen. It would be a question of luck. And, as you know, preparing a case to apply for leave is nearly as costly and as time consuming as preparing the appeal itself. That is the point I wanted to make.

By the way, I have some figures which were given to me by Senator Connolly as to the number of applications in 1972, 1973 and 1974 which I shall put on the record for the benefit of the discussion. In 1972 there were 156 applications, of which 39 were granted; in 1973 there were 169 applications, of which 58 were granted; and in 1974, up to October 15, there were 103 applications, of which 40 were granted. But I think we could assume that this number would be multiplied by three in the first years, particularly if the situation remained confused.

The Chairman: Mr. Smith, is there anything you would like to add to that?

Mr. Smith: I do not think there is really anything more I can say to that point beyond what I have already said. It is a valid concern and it is one that we share, but it is our hope that the situation will be clarified reasonably quickly—that is, to the extent that it can be clarified—and we know that there are these matters which are just not capable of precise definition. If they were, then perhaps we would not need the appeal route.

The Chairman: At this point I might suggest that, since this is one of the main points discussed in the report of the Canadian Association committee, it might be appropriate to ask Mr. McKelvey and Professor Lederman to talk to us on it. Is that agreeable?

Senator Laird: That is what I was going to suggest.

Senator Connolly: Mr. Chairman, before Mr. McKelvey and Professor Lederman are called, it might be useful for Mr. Smith to remind the committee that an application for leave to appeal to the court in Canada would be heard

pursuant to section 45 by the court. This is in contrast to the situation in the United States, which I do not say is worse or better, that is to say that here there is an actual *viva voce* argument before the judges by the litigants or by their counsel. In the United States there is no hearing as such, but material is filed and considered by all of the individual judges—and this perhaps will be of interest to Senator Buckwold—and they simply hand in at a meeting of the judges in conference, as I understand it, their idea as to what should be done, and this may be done with or without reasons. But here we actually have a hearing.

Mr. Smith: Certainly as far as the Supreme Court practice is concerned, I can confirm that, and that hearing is not one that is limited as to time although generally, the sole question being as to whether the appeal has any merit, it does not take a long time. My understanding of the practice in the United States Supreme Court is as you have described it, and that many, many, in fact thousands of petitions come to that court and they are dealt with by that court sitting in conference, and are never, I believe, the subject of any argument by counsel. They are decided on the basis of written pleadings, and I gather that this is a very serious problem at the present time for the Supreme Court—the number of applications or petitions for *certiorari* with which it must be concerned and with which it must deal.

Senator Connolly: We may have to come to that a hundred years hence.

Senator Flynn: Did you say "a hundred years"?

Senator Connolly: Yes, it may well come to that.

Senator Flynn: Let us worry about now.

Senator Connolly: The volume of work involved in thousands of cases is considerable.

Senator Greene: Mr. Chairman, I should like to ask Mr. Smith whether the bill is predicated on a policy decision of the government to cut the court's workload and thereby close out the possibility of enlarging the court, or whether it is merely an amendment to make certain things operate differently, and whether the workload is greater or not is not a condition precedent to the bill.

So my question is whether the decision has been made simply to cut down the workload of the court, or is that issue still open? If it enlarges the work of the court, I hope that it will and that there will be more appeals rather than fewer because it is one of the very few sources of unity we have—at least, in a limited sense—it is one of the agencies of Confederation which has brought some unity and the more we restrict it, then the less useful it is in that area. So I am wondering whether there is a policy decision that this bill should cut down the workload of the Supreme Court as it now exists, or whether that decision has not necessarily been made in drawing up the provisions of this bill.

Mr. Smith: I think the answer to that is that the bill is intended to put the bulk of the workload of the court in the court's hands. In other words, it can deal with the maximum number of cases that it determines it can deal with, and not be inundated with a very large number of cases with which it obviously at the present time cannot deal within the time at its disposal. So I do not think it is necessarily predicated on a cutting back; it is predicated on making the workload manageable in terms of the court's operation.

Senator Buckwold: I think that is what is worrying me. If the level of work is dictated by the workload, then good appeals could be rejected.

Mr. Smith: If I might continue on that point for a moment, if you eliminate from the workload of the court those appeals which now have no real merit in terms of public importance or in terms of general interest or in terms of clarifying the common law, or the bringing of the common law of various provinces together, then there ought to be a good deal more time to deal with what might be considered as fundamental issues of public importance.

[Translation]

Senator Riel: Are criteria for appeals to the United States Supreme Court well specified in their regulations? Are they clearer than ours?

Mr. Smith: Frankly, I would not know. However, it is possible, senator, that Professor Lederman might answer this question. On the other hand, as it is, it is very difficult to be very accurate in this matter. However, if you ask Professor Lederman, I think that perhaps he could answer better than I could.

The Chairman: This is why, senator Flynn, I asked Mr. McKelvey and Professor Lederman to answer your question on this point.

[Text]

Professor Lederman, would you please join Mr. McKelvey at the table. The point raised by Senator Flynn on public importance and the criteria which the court would establish, and the related questions, are all dealt with in the report of your committee, Mr. McKelvey. I thought that if you or Professor Lederman would talk on those points, it would be useful to the committee.

Mr. E. Neil McKelvey, Q.C., Immediate Past President, Canadian Bar Association: Mr. Chairman, is it your pleasure that we should get into details at the moment, or would you like more background on the report?

The Chairman: I think it would be useful if the committee had more background information on your report and then went into detail.

Mr. McKelvey: Honourable senators, the background, as you all know, is that the workload of the Supreme Court of Canada became quite heavy, and in 1972, the then Minister of Justice, the Honourable John Turner, asked the Canadian Bar Association if we would undertake a study confined to measures to alleviate the workload of the Supreme Court of Canada in civil cases.

This was done, and the members of that committee were Mr. B. J. MacKinnon, of Toronto, who is chairman. I might say that unfortunately Mr. MacKinnon is not able to be present today because he is hospitalized. The other members of the committee were Mr. George S. Cumming, Q.C. of British Columbia, Mr. J. H. Laycraft of Alberta, Mr. Keith Turner, Q.C. of Manitoba, Mr. Francois Mercier, Q.C. of Quebec, Mr. D. M. Gillis of Saint John, New Brunswick, and Mr. I. Norman Smith who is the retired editor of the *Ottawa Journal*.

The Donner Foundation financed the committee. As a result, the committee was able to retain the services of Professor W. R. Lederman, who is with me, as a research officer.

Senator Godfrey: Who actually appointed the committee?

Mr. McKelvey: The committee was appointed by the executive of the Canadian Bar Association.

Senator Connolly: Would you say something about the foundation that supported this?

Mr. McKelvey: It is the Donner Canadian Foundation of Toronto. I cannot tell you much about the Donner Foundation, senator, except that I know they are interested in making grants for the purpose of furthering legal affairs.

Senator Connolly: Their interest is primarily in the field of law, is it?

Mr. McKelvey: All I can say to that is that they do have an interest in the field of law. Whether it is primary or not, I do not know.

Senator Connolly: It is good to hear. I read it in the report.

Mr. McKelvey: They have financed a good many projects in the area of law. This is not the only one. In fact, this is one of the smaller ones.

Senator Greene: Your terms of reference were a little different from those to which Mr. Smith referred. They were specifically to cut down the number of cases.

Mr. McKelvey: No. The terms of reference of the committee were to study the problem created by the workload of the Supreme Court of Canada, and recommend solutions. We were not directed as to whether or not to cut down the number of cases, or to increase the court. We were told, "There's the problem. What do we do about it?"

The Chairman: The problem of congestion.

Mr. McKelvey: Yes, congestion. Mr. Chairman, if you do not have enough copies of the report, we have some here and can make more available.

The Chairman: I was going to suggest at the end of the hearing that we might move that the report be published as an appendix to today's proceedings.

Senator Connolly: It is voluminous.

The Chairman: It would not be more than 35 printed pages. It is a basic document.

Senator Flynn: I would agree with that. I was being very careful, because I have a copy here which is marked "Confidential".

Senator Connolly: I marked them that way because it has not yet been released.

The Chairman: Mine is not marked "Confidential", so they could have mine.

Mr. McKelvey: Mr. Chairman, I do not know how this ever received a "Confidential" tab. It was released to the press.

Senator Flynn: It would be useful to have it printed.

Mr. McKelvey: Mr. Chairman, the background, which I think is worth reading, is set out very briefly on pages 1 and 2:

The number of cases to which a court of nine judges can give proper personal attention in a single year has definite upper limits, and, unfortunately, too many cases are now being filed on appeal with the Supreme

Court of Canada, to which the court is required by law to give a full hearing. This overload has been progressively increasing during the past five years. The position we have reached is that it now takes about two years from the date notice of appeal is filed until the case concerned can be given a full hearing, although hearings are held sooner by way of exception in cases of great urgency. There is accordingly a serious backlog of cases ready to be heard that appears to be getting longer as time goes on.

That is the problem to which we were asked to recommend a solution. I think, Mr. Chairman, the committee would be interested in hearing all the recommendations. The principal recommendation is:

That all appeals in civil cases to the Supreme Court of Canada should require leave from a panel of judges. Appeals as of right in such cases should be abolished.

Criminal Appeals. Present rules should be continued.

Reference cases—

That is, references from the Governor in Council.

Present rules should be continued.

Then there were a number of subsidiary recommendations and comments. The committee recommended that:

The abolition of appeals as of right in civil cases should be made fully effective without delay.

When this committee report was referred to the council of the Canadian Bar Association for discussion, recommendation No. 1 was altered to the following effect:

That the first subsidiary . . .

I am reading from a letter which I wrote to the Honourable Otto Lang, the then President of the Canadian Bar Association.

recommendation of the Committee abolishing appeals as of right should only apply to cases which have not been commenced in the lower court at the time any enabling legislation takes effect. Strong objections were taken to the Committee's recommendation which would, in effect, make the proposed legislation retroactive by applying to cases actually before the court at the time of the legislation and the meeting did not favour this retroactive feature.

Mr. Chairman, I would like to return to that later. You have the committee's recommendation and the council's amendment to it. The council's amendment, I might say, was on a vote of about 60-40.

The second subsidiary recommendation:

Present procedures for hearing applications for leave to appeal should be continued.

That is, briefly, three judges with a time limit on verbal argument, with written material filed in advance.

(3) Judicial definition of elements of public importance should govern when applications for leave to appeal are granted or refused.

That was amended by the council of the Canadian Bar Association to read:

Judicial definition of elements of public importance or an important principle of law should govern . . .

Senator Robichaud: I think I heard you say there should be a time limit given to applicants for leave to

appeal. I heard previously that there should be no time limit. I am not sure who said that.

Mr. McKelvey: For all applications for leave to appeal there is now a time limit.

Senator Flynn: I do not think so.

Mr. McKelvey: Perhaps Professor Lederman can answer that.

Professor W. R. Lederman (Q.C., Research Officer Canadian Bar Association): If I may speak to that point, Mr. Chairman, although Mr. Smith may know better than I, my impression is that there is a practice rule of 35 minutes.

Senator Flynn: Not written.

Professor Lederman: However, if the three judges on the panel recognize a necessity for more time, they give it. There have been occasions when a day has been given to an application.

Senator Flynn: It is not a written rule.

Professor Lederman: It is a practice admonition from the court.

Mr. Smith: Perhaps I could read that point from page 12 of the report:

In the Supreme Court of Canada, three panels of three of the nine-man Court could sit simultaneously if necessary, to hear applications for leave to appeal and the present practice rule covering time limits on all argument (not more than 35 minutes) for such applications could be enforced, with exceptions to be left to the discretion of the Court.

This, Senator Robichaud, is on applications for leave to appeal only, not on appeal.

Senator Greene: Was the committee, then, the creation of the council of the Canadian Bar Association, which then reported back to it, or was the committee actually appointed by the Governor in Council?

Mr. McKelvey: The committee was appointed by the executive of the Canadian Bar Association, which has authority to act between council meetings. It was felt urgent enough that the executive should appoint the committee, but the committee did, of course, have to report back to the Canadian Bar Association official group, which in this case was the council. It was appointed by the Canadian Bar Association, not by the government.

Senator Robichaud: At the request of the Minister of Justice.

Senator Greene: But the official communication between the council of the Canadian Bar Association and the Governor in Council is not the report of the committee, it is the communication of the Canadian Bar Association, which may be based to some degree on the committee. The committee report is actually made to the council of the Canadian Bar Association and the communication to the government is from the council of the Canadian Bar Association.

Mr. McKelvey: Officially that is correct, but, of course, the Minister of Justice had a copy of the report. Actually there are only the two amendments made by council. One is the retroactivity feature, to which I will refer later. The

recommendation of the council of the Canadian Bar Association is not adopted in the legislation, but that of the committee is followed. In the case of the judicial definition the definition of the words "or an important principle of law" after "public importance" is adopted in the legislation.

Senator Laird: Mr. Chairman, supplementary to this matter of the time taken, the matter of practice, 35 minutes, I cannot see anywhere in the act or in the report any suggestion that the judges should be required to give reasons for refusing an appeal. Am I correct in that assumption?

Mr. McKelvey: I believe that there is a suggestion here, or an expression of a hope that the Supreme Court of Canada would give sufficient reasons for judgment in applications for leave to appeal that litigants and council would know how the court is to interpret the statutory criteria of which Senator Flynn spoke.

The Chairman: That is on page 13.

Senator Laird: Should we introduce an amendment to this bill making it a requirement that reasons be given? Quite frankly, I have the same concern as Senator Flynn. While it has not happened, fortunately, to me personally, I have sat in court and heard requests for leave to appeal which have been rejected without reason. How can we build a body of jurisprudence if that practice is to continue?

The Chairman: That is what the courts in the United States have been doing for many years.

Senator Laird: Yes, but they still have some precedents in the United States.

Mr. McKelvey: Surely we can rely on the judges of the Supreme Court, who are sufficiently aware of the importance of this, to give reasons for judgment in any case in which it is warranted. I would doubt the wisdom of providing that reasons should be given in every case. For example, reasons for judgment would surely not be necessary in a case in relation to the quantum of damages, or who arrived in the intersection first.

Senator Riel: But it would be easy to give the reasons in such a case.

Senator Laird: It could be done in one sentence.

Mr. McKelvey: I am sure the litigants know the reasons why they have been turned down. Any time I have been turned down I have had a pretty good idea why.

Senator Laird: I have heard them turned down when I did not know why, and I could even mention the name of a very important counsel who was as puzzled as the rest of us as to why the request for leave was turned down.

Mr. McKelvey: Mr. Chairman, I just leave the thought with you that I doubt the wisdom of requiring the court to give reasons. No doubt that could be done later.

Senator Godfrey: It would increase their workload and defeat the purpose of the legislation.

Senator Connolly: I do not want to repeat my own speeches, Mr. Chairman.

Senator Laird: It is a good source.

Senator Connolly: But it has been done.

While Senator Flynn was speaking to this point I was able to quote a section of an article written in the *Canadian Bar Review* in the fifties, which strongly urged that reasons for judgment should be given by the court if this step were ultimately taken. It has taken 20 years to take the step. The article urged that a body of jurisprudence should be built up, and the author of that article was the then Professor Bora Laskin, so apparently he has had this in mind for some time.

Mr. McKelvey: I think it might be useful if I briefly run through the remainder of the proposals, although they do not strictly pertain to the legislation.

To deal with the subsidiary recommendations, the fourth is:

Certain questionable uses that might be made of appeals as of right in civil cases would be precluded by the abolition of such appeals.

The Chairman: May I suggest, Mr. McKelvey, that you develop that, because you have a very interesting argument in the report to do with that very point.

Mr. McKelvey: I would rather have Professor Lederman do that, because he was a member of the committee and I was not. Do you wish to deal with that point now, or should I proceed with the remaining points?

The Chairman: Would you please proceed with the remainder.

Mr. McKelvey: The fifth recommendation is:

The Supreme Court of Canada should remain the general and final court of appeal for Canada on all subjects. The Court should not be limited to so-called federal questions.

A suggestion was made by a Senate and House of Commons committee to that effect. The Canadian Bar Association recommends against it.

Senator Connolly: Is that so?

Mr. McKelvey: Reference is made in the report to a report of a committee which existed.

Senator Connolly: Well, that is a very bad recommendation.

The Chairman: That was the Joint Committee on the Constitution.

Senator Connolly: You were not a member of that!

The Chairman: No, I was not.

Mr. McKelvey: Subsidiary recommendation No. 6 is:

The Supreme Court of Canada should continue at its present size of nine judges, but, if our principal recommendation does not bring the necessary relief from case overload after a trial period, enlarging the Court should then be considered.

Recommendation No. 7 is:

The present Court year of three sessions should be continued.

No. 8 is:

The judges cannot delegate their essential functions, so the assistance available from law clerks is severely limited.

Finally:

The present practice of full oral argument in the Supreme Court of Canada should be continued.

Those, Mr. Chairman, are all the recommendations. Perhaps now you would like Professor Lederman to comment with respect to proposal No. 4, that "certain questionable uses that might be made of appeals as of right in civil cases would be precluded..."

The Chairman: I would suggest that he deals with Nos. 3 and 4, 3 dealing with the elements of public importance.

Senator Greene: Will the point in relation to delegation be affected in view of the fact that we now have or will have some supernumeraries?

Mr. McKelvey: Are you referring to supernumerary judges?

Senator Greene: Was there not some provision at one time where they could retire early or work when the workload was heavy?

Mr. McKelvey: That is the provincial courts.

The Chairman: That does not apply to the Supreme Court.

Mr. McKelvey: I should say that recommendation No. 3, public importance or an important principle of law, is carried forward in clause 5 of the bill enacting a new section 41 where the criteria are set out. That has already been discussed. Clause 3 of the bill repeals the present section 36 under which there is now appeal as of right. Clause 5 amends section 41 and specifies the criteria to be taken into account, and clause 9(2) does the same thing with respect to the Federal Court. I myself will deal with clause 10(2) at a later stage.

The Chairman: Professor Lederman.

Professor Lederman: Thank you, Mr. Chairman. With your permission, I will take these two points in the order in which they appear in the report. The committee's recommendation is that:

Judicial definition of elements of public importance
—and the phrase "public importance" was used as the key operative phrase—

should govern when applications for leave to appeal are granted or refused.

There are about 300 words in the report on this subject, and I might start by reading that section of the report.

Senator Godfrey: What page is that of the report?

Professor Lederman: Page 14 of the report, senator. I have also assembled some additional information which I think might be of interest to the committee. I will now quote from page 14 of the report:

(3) We have said that the grant of leave to appeal to the Supreme Court of Canada should depend upon the presence in the case offered for appeal of some element of public importance beyond the purely individual concerns of the parties to the case. We have given some thought to further definition in some detail of these elements of public importance, and we have concluded that specific definition and development of such criteria should be left with the Courts themselves,—

The word "Court" is pluralized in this instance. The reason for that is that while most of these leaves to appeal will go to the Supreme Court of Canada in the manner previously described, the committee has also proposed that the existing system whereby it is possible for a provincial court of appeal to grant leave to appeal from one of its own decisions, which the Supreme Court of Canada must then honour, should stay in place. We have not said anything about the rules which ought to apply for the provincial courts of appeal because that was not part of our mandate, and is a matter of civil procedure for the provincial court systems. One would hope and expect that the provincial court systems, if they make extensive use of their own powers to grant leave to appeal, would follow the same principle.

Going back to the report:

We have given some thought to further definition in some detail of these elements of public importance, and we have concluded that specific definition and development of such criteria should be left with the Courts themselves, as they pass upon the great variety of applications for leave that would come before them. We do recommend that in some instances the judges publish reasons for granting or refusing leave, so that some precedents to guide litigants and lawyers would be on the record. We note in support of our general position in this respect that the Law Lords of the House of Lords in Britain and the Justices of the Supreme Court of the United States have determined the elements of public importance that lead to the granting of leave to appeal in those countries. In Britain since 1934, all appeals to the House of Lords have been by leave only, and in the United States, since 1925, nearly all appeals to the Supreme Court of the United States have required the leave of that court. We believe that judicial perceptions of what is of public importance should be trusted here in Canada, as they are in Britain and the United States.

Nevertheless, we might, in concluding our discussion on this point, mention a few examples of elements of public importance that could make a case eligible for the grant of leave to appeal. An obvious one is a case wherein the constitutional validity of a Provincial or Federal statute is challenged under our Federal Constitution. Another instance might be a case where there have been conflicting interpretations in the lower courts of certain provincial statutory provisions or of some basic common law principle. Still a third example might be the need to settle the interpretation of some new provision of a federal statute. This list is certainly not exhaustive, and no exhaustive list could be made. This is why we recommend the flexibility that comes from leaving these criteria to judicial determination.

If I may, Mr. Chairman, I will just say a word or two on the general principle which we felt was behind that, and then I am prepared to point out more about the American and British systems, for whatever instruction that may have for the committee.

Mr. McKelvey: Perhaps I could interrupt for just a moment, Mr. Chairman. You will note from what Professor Lederman has read that the phrase used is "public importance". That, of course, is the committee's recommendation. The additional words "important principles of law" are omitted from the text because they were inserted by

the council at a later time. I understand the committee has no objection to those additional words. I think the committee said they were not necessary, and some of us did not agree with the committee in that respect.

Senator Flynn: You are now talking about the committee of the Canadian Bar Association?

Mr. McKelvey: Yes.

Professor Lederman: I think the key word is "important", either as an Adjective or as a noun. Certainly, my feeling is that it is just as well that the words are there. It makes it a little more clear.

Senator Flynn: I do not know about that.

Professor Lederman: The concern of a second level of appeal, of course, while not exclusively such, is going to be principles of law, and it ought to be perfectly clear that that will be a very important concern.

That leads me to the general point I think I should make, which is that this is a second level of appeal, as Mr. Smith has already said. The first level of appeal from the Trial Division is a matter of right in all parts of the country. The question then is: Why a second level of appeal? It is in an endeavour to answer that question that we make the points we make in the report, and it is also in an endeavour to get assistance in answering that question that we look at the Supreme Court of the United States and the House of Lords in Britain, since both of those bodies are also second levels of appeal in their respective judicial systems.

The committee points out that the justification for a second level of appeal is that the highest court, the final court, the court of last resort, can give judicial leadership on matters of considerable importance to the country by the precedents it sets in deciding cases, either common law principles or the interpretation of statutes. The function of judicial leadership is for the country as a whole, because it is the only court that can give you a precedent that is binding for the whole of the country. It is a crucial function, and it is in aid of performing that function properly that the recommendation is put forward that the court should itself control the selection of cases it is going to hear by the device of the requirement that leave of the court itself must be obtained before an appeal can proceed. If the permission is granted, there is a full hearing for whatever time is necessary in the Supreme Court of Canada itself.

The judicial function is personal. The judges have to perform their respective function personally; they cannot delegate this function. No one else can write their judgments. They can get a certain amount of marginal assistance from research assistants, which they are doing, but the final responsibility of the judges, particularly the judges of the Supreme Court of Canada, is that they must address their minds personally to every issue in the cases that come before them for full hearing. That is what puts the upper limit on it as a matter of quantity and load. We have documented the fact that there is serious overload here. There should not be a two-year interval between the notice of appeal and the hearing. But what else can happen if there is no screening process going on that prevents overload?

With respect to the screening process that is proposed—that all civil appeals should require leave, and most criminal appeals at the present time require leave also, not all but most of them—what is done is this. First, the court can

see that it holds down the cases for which leave is granted to 120 or 130 a year, something it can handle properly, with proper attention. Then, of course, it becomes very important that, out of the whole range of hundreds of cases offered for appeal by way of application for leave to appeal, we ensure that the best selection has been made of the most critical cases. This was the point to which Senator Buckwold was addressing himself, I think. Actually what we are proposing will, I think, get us closer to what you would like to see than anything else. Indeed, the object is to get us to that.

Senator Buckwold: I agree with you, as long as the type of appeal allowed is not dictated by the workload of the court, as the first criterion.

Professor Lederman: I quite agree. There is no intention here to make life easy for the Supreme Court of Canada. Indeed, one expects they will take the maximum load of cases they can reasonably take in a year. But even when they have done that, they cannot take everything. Therefore, there must be some device whereby they select the more important from the less important cases, and endeavour to take the 120 or 130-odd more important cases.

The philosophic thought behind that is that the judges, as knowledgeable men about the state of affairs in the country, can by this device keep their fingers on the pulse of the country. I think we all know that the state of litigation, and the types of cases that are being pressed at any given moment, in a very genuine way reflect the pressure points in our social and political system. The Supreme Court judges, we are saying, ought to be trusted to look over the whole range of appeals, the types of things that are in them, and put their fingers on the important ones that are ripe for decision by the final court in the sense that leadership on that point, final precedent on that point, is wanted from the Supreme Court of Canada. This is what one would hope that they would do, that they would keep their eye on the whole range of things that are being raised.

It is true that under present procedures—and we recommend that the present procedures should continue—only three of the nine judges normally sit on these applications for leave, though on very important applications for leave the Chief Justice can assign more judges, which indeed has happened too on the application for leave itself. One expects—and again this is an internal matter in the court, or, in any event, it should be an internal matter in the court operation and organization—the judges to be setting the court's policy on these matters in judicial conferences. The three judges hearing any particular application for leave will, of course, be aware of what the policy is, what their brother judges consider are important issues. I would point out that even the panel of three will operate by majority, and two out of the three can give permission for the appeal. In effect, if two Supreme Court judges believe the appeal should go, it will go.

Senator Robichaud: As a final judgment, two out of three?

Professor Lederman: Yes. If the final determination on the application for leave is two to one that leave should be granted, leave is granted and the case is heard.

Senator Buckwold: Or two could reject, so that means two out of nine are rejecting leave to appeal.

Professor Lederman: That is right.

Senator Flynn: It is not so bad for the people involved when leave is granted as when leave is rejected.

Senator Robichaud: Are there statistics anywhere indicating, over the last five years for instance, the percentage of applications for leave to appeal that were rejected and that were granted? I am thinking of frivolous applications, such as one I have in mind at the moment, when recently a humble peasant spent four or five days before the Supreme Court of Canada wasting precious time just to challenge the authority of the Parliament of Canada to pass legislation on a given matter. I thought that was frivolous. What is the percentage of those frivolous applications?

The Chairman: There is a table in the report to which Professor Lederman can refer, which gives the figures you are asking for.

Senator Flynn: They are not necessarily all frivolous.

Senator Robichaud: I would like the percentage of those rejected and those granted.

The Chairman: Not under the headings of "frivolous" and "non-frivolous"?

Senator Robichaud: No.

Senator Riel: It would be an advantage if they gave the reasons for their judgment, so that if they are frivolous, for instance, we would know and be able to have proper statistics.

Professor Lederman: I could give the figures very quickly from the table. In 1961, 38 per cent of applications for leave were granted. This is under the present system, where about 20 per cent of the cases the court hears each year are before it because it granted leave to hear them. In 1961, 38 per cent; in 1962, 28 per cent; 1963, 25 per cent; 1964, 27 per cent; 1965, 27 per cent; 1966, 18 per cent; 1967, 30 per cent; 1968, 27 per cent; 1969, 20 per cent; 1970, 16 per cent; 1971, 17 per cent. The proportion of applications for leave granted under the present system, where it bears on only 20 per cent of the workload, is falling, and this is one of the things that we think is wrong. The cases where application for leave is now necessary are being squeezed, that category of case is being badly squeezed, because under present rules the court is unable to refuse any cases where \$10,000 or more is involved. That category of case is growing; they cannot stop it growing; this is where the pressure is.

Senator Flynn: Inflation!

Professor Lederman: The other types of cases are getting badly squeezed.

Senator Riel: Do you not think that by the wording of the new section 41 it would be possible to increase very greatly the number of applications?

Professor Lederman: I think you are quite right about that. There will be a big increase in applications. We are hopeful that the court could cope with it. We also, of course, recommended that they should start giving some reasons in some cases, so that in the normal common law way, in the normal judicial precedent way in our country, a jurisprudence would be built up, giving some guidance to litigants.

Senator Greene: I am a little disturbed by the restrictions of "public importance", and I wondered if your committee gave any thought to this. Virtually all matters that

we deem today to be of public importance, which have emanated through the judicial rather than through the legislative screen, have become matters of public importance because some individual or group thought them of sufficient public importance to take them as far as they could go judicially. I refer to everything from the right to collective bargaining, the Rand formula, to the right of native peoples. These were not of public importance until some individual or group fought them through to the highest court of the land and the decision of the court then made them of public importance. Something that is of public importance is important today.

Now, does that narrow definition of "public importance" give the court sufficient leeway to say, "Here is a principle that nobody is interested in today, but it may be something which in our future will be of public importance and, therefore, it should have the benefit of our review"?

Professor Lederman: I will try to respond to that, senator. I think, first, as a launching point for my further explanations, I should read what the test is as proposed in the new legislation, that is, that leave to appeal is necessary:

... where, with respect to the particular case sought to be appealed, the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in such question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it, and leave to appeal from such judgment is accordingly granted by the Supreme Court.

I think Mr. Smith and his colleagues in the Department of Justice have given us a good section there. It is, I think, as broad as it can be in general terms. This comes back to the eternal problem of how particular you are going to get in legislation. If you establish a lengthy category of things that are of public importance today and you freeze it into this legislation, then the basic thing that one hopes will happen here really will not happen, because counsel will look at the catalogue of 12 or 15 heads of things that are of public importance, and counsel, good counsel, will bring his particular subject under one of those heads, one way or another, and then he will say to the Supreme Court, "You must hear us. We are under head No. 15." Of course, if that happened we would not be out of an unmanageable case load at all. That is the danger that exists in trying to catalogue issues of public importance. That is why we have said, "Trust the judges of the Supreme Court of Canada. They are men of their times. They are men in touch with their countrymen. As circumstances change, trust them from time to time to put their finger on the things that are of public importance today." Of course, you must have the long view to the future in mind. They must be things of enduring public importance, not things of just present excitement but things of real importance. The judges, because of their permanent tenure in office, are in a position to do that. They can take the long-range view which it is more difficult for others to take.

Senator Greene: It is a subjective opinion, but we are getting very close to the fact that, in my view, in a federal state the Supreme Court should have some of the ability to enlarge the Constitution. I do not think the Constitution can only grow legislatively in a federal state. Were it not for the Supreme Court of the United States, for example, they would not have made the degree of progress they have

in their civil liberties laws. Whatever degree of progress they have made has been made judicially, and it would never have been made legislatively.

Being one of those who believe in a quasi-legislative function of the Supreme Court, I hope this definition of "public importance" does not so narrow the bill that it is only subjects which are extant with which the judges are going to be able to deal.

The Chairman: Senator Greene, I do not see how you could say that clause 5 is narrow. I think it is as broad as it could possibly be.

Senator Flynn: In fact, it might even be an encouragement to the Supreme Court to try to further its legislative authority. There may be the possibility of an abuse in that regard.

Senator Connolly: Mr. Chairman, undoubtedly the Supreme Court of Canada has enlarged the interpretation of the Constitution. Just look at our own house. A reference was made to the Supreme Court with respect to whether or not a woman was a person within the meaning of one of the sections of the BNA Act, and the court's enlargement made it possible for us to have very distinguished people in our house.

The Chairman: We are benefiting from that judgment.

Senator Connolly: That is right.

Senator Buckwold: Perhaps, Professor Lederman, you might explain the thinking of your committee in this regard: If the objective was to reduce the workload and yet have all the rights of appeal necessary to provide for the public issues involved, why, in addition to clause 5, which I agree is excellent, did you not also put in an amendment to increase the monetary limit on the right of appeal? The monetary limit has been \$10,000. Why did you not make it, say, \$100,000, or something of that sort, in order to limit the number of appeals?

The Chairman: I should point out that Professor Lederman will be dealing with that on the next point, senator.

Professor Lederman: Yes, I can deal with it there.

Senator Godfrey: On that very point, Mr. Chairman, we have all been talking here about public importance. I think public importance should be the primary test, but I do not think it should be the exclusive test, nor do I think, from the way I read this clause, that it is the exclusive test. Nobody has mentioned this, but it does say, "of such a nature of significance as to warrant decision by it," and I would respectfully suggest that if there were a \$10 million judgment against someone, even though no one else was concerned and even though it was not a matter of public importance, that in itself would be of sufficient importance or significance that the Supreme Court would grant leave and would hear the appeal. Am I not correct that the section is drafted to cover that?

Professor Lederman: I think it is. Actually, the committee's intention and what is in the section are, I think, in harmony, because we did intend what I would call a plenary discretion for the Supreme Court of Canada on criteria for leave to appeal.

Mr. McKelvey: I might say, Mr. Chairman, that the original recommendation used only the words "public importance". It was a fear that that might be too restrictive

that led the council to add the words "or an important principle of law". So it was that sort of same thinking that brought that about, and now I think the new proposed section 41 certainly takes that into consideration.

Senator Godfrey: It goes a step further.

Mr. McKelvey: Yes, it goes a step further, because it refers to "for any other reason." I think it is fair to say that the section is broader than the strict reading of the committee's report, although, as Professor Lederman said, it does reflect the committee's thinking as to what the criteria should be.

Senator Laird: Mr. Chairman, before we get away from this section of the Canadian Bar Association's brief, on page 14 I see the words, what I would call the precatory words, for giving reasons for turning down an appeal or for refusing leave to appeal. Did you ever consider this, that in setting up the Tax Appeal Board there was a legislative requirement that reasons be given for the disposition of any appeal to that board? And it worked there. Mr. McKelvey seemed to turn down as being impractical, the proposition of legislating anything about giving reasons, but it worked in the case of the Tax Appeal Board.

Professor Lederman: Well, my response to that, sir, would be this, that the Tax Appeal Board is, of course, a highly specialized tribunal, and it does not have to range over all departments of the law in the same way as the Supreme Court of Canada does. I think it is unpredictable what the workload of dealing with applications for leave to appeal is going to be.

I can elucidate a little more on the American and British positions on this point. In the United States you get no reasons at all. In Britain also reasons are not given; reasons are not given in the House of Lords—and I will say a little more about that in a few minutes. The committee thought that reasons should be given so that in the normal, traditional way in this country, of building up rules by precedent, this would come about; and in effect we urged the Supreme Court to do this. We did not feel, however, that it was our place to say that they must do it, and I think that I myself would be uneasy if Parliament were to tell them that they must give reasons. Mind you, Parliament does this with the reference cases, it is true. It says, "We refer a question. We want reasons." But there is only a small number of reference cases, and there are going to be hundreds of these cases. We therefore thought that here again one must trust the judges. These are the highest judges in the land, and one ought to trust them.

Senator Greene: Why did you turn down the House of Lords experience and the United States Supreme Court experience? Why did you not go their way? Why did you tend to set up a leave to appeal hearing, rather than doing it their way, in your discussions?

Professor Lederman: Well, we thought we would trust the judges. I think the process in the United States is too secret. The hearings in Britain are public, but the giving of reasons is very seldom done.

As the report tells, the change in the United States came in 1925. In 1925 they were two years behind because there were a lot of mandatory appeals that they had to hear, and at that time Congress, by legislation, gave the Supreme Court of the United States control over most of the cases which it was to hear, in this sense, that the would-be appellant had to make a petition for a writ of certiorari,

which is the procedure for review in the Supreme Court of the United States—the main procedure—and that had to be considered and granted before the case could be heard. There are no particular criteria in the basic legislation dealing with this matter, though I have it here, and I could quote it to you if you wish; but the Supreme Court of the United States did make what it calls rule 19. This is done under the rule-making power, and of course our Supreme Court of Canada judges have rule-making power, and they might just feel this was the way to do it; but, again, I would leave it to them. May I, however, read you rule 19 of the Rules of the Supreme Court of the United States? This actually comes from West's Federal Practice Manual, 1970, with pocket part for 1973:

The court has specified in its Rule 19 certain standards for guidance in the granting of certiorari. This Rule reads as follows:

1. A review on writ of certiorari is not a matter of right, but of sound discretion, and will be granted only where there are special and important reasons therefor.

There is almost the same phraseology, you see, that we are speaking of.

The following, while neither controlling nor fully measuring the courts' discretion, indicate the character of reasons that will be considered:

(a) Where a state court has decided a federal question of substance not therefore determined by this court, or has decided it in a way probably not in accord with the applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

So I think it is of some interest, as I read rule 19 of the Rules of the Supreme Court of the United States—and this has been in force there for many years—to see that it is very close to saying what the Department of Justice has drafted in the proposed new section 41 here.

Now, as for ascertaining reasons for what the Supreme Court of the United States does, what happens is that the whole thing is done on documents. A petition is sent in and there is a reply from the respondent. It is a fairly simple set of documents. There are thousands of these—I think the figure is around 5,000, now—per annum, in the United States. These cases are duplicated, and they go separately to all the justices in their offices. Then comes the judicial conference, and the judicial conferences are held at least once every fortnight, and at these conferences, which are totally secret—no one is present except the justices, and

the junior justice answers the door if anyone knocks—the petition for writs of certiorari are voted upon. If four judges out of the nine are in favour of a petition being granted, it is granted, and the case is then set down for full hearing. If less than four are of this opinion, that is, if less than four are prepared to bring it up and vote for it, or no one is prepared to bring it up and vote for it, the petition is denied, and the decision of the lower court stands.

Senator Greene: That proportion is a practice, not a rule, of the Supreme Court of the United States, as I understand it.

Professor Lederman: That is as it applies to petitions for leave, that is right, yes. That is a practice. The statutory quorum of the court is seven of the nine justices; so the figure four is a majority of the statutory quorum; but normally the Supreme Court of the United States operates as a plenum of nine, because as they read the Constitution of the United States it requires them to operate in this way.

Now, in Britain what happens on appeals to the judicial committee of the House of Lords is this—and I am speaking now of appeals from the English Court of Appeal—the would-be appellant must apply first to the Court of Appeal for permission. If he is granted permission to go to the House of Lords, then the House of Lords honours that permission and he gets his hearing in the House of Lords. If he is refused in the Court of Appeal, he still has the option of going to the appeal committee of the Law Lords and if he succeeds there, even though he has lost in the Court of Appeal, then he gets his hearing.

While these hearings are public, the judges seldom give reasons. What happens in the Court of Appeal is that this application is almost invariably made at the close of the case. And the judges in the English Court of Appeal are almost always prepared to indicate the result at the conclusion of the argument while the court reporter is still there and the parties are still there. In that way they know who has lost. Then the loser may want to appeal, and the usual thing is that he makes his application there and then in open court while the court reporter is still there and still making notes, so that if the judges drop any remarks about why they are allowing or refusing to allow the appeal they go into the court reporter's notes. So the only record is in the court reporter's notes and these are filed in the Bar library in London and can be seen there.

I have a study of the House of Lords here that was done recently—too recently to be considered by our committee. There are several pages showing where they have gone through the court reporter's notes, which originated as I have indicated, and as a result of this they can give you some indication as to reasons. But I do not find it is very helpful. I can go through that list for you in a minute, if you wish.

This same study of the Judicial House of Lords makes some recommendations for change in Britain, and the changes amount to this. They say that it is really something of a waste of judicial time for the appeal committee of the Law Lords to function at all because everything has to go through the screening process of the Court of Appeal anyway because you get a panel of judges of the Court of Appeal looking at whether there should be an appeal or not and saying yes or no.

Senator Connolly: In that case, the judges who hear the actual appeal in the Court of Appeal are the very same judges—not brother judges—they are the very same judges

who decide to grant or refuse leave to appeal to the House of Lords.

Professor Lederman: That is right, yes. I am just saying here what the students of the matter have recommended in their latest books. I doubt if that will change anything, but the point I am leading up to is this, that by the Administration of Justice Act, 1960, in Great Britain, on the criminal appeal side, in the divisional court of the Court of Queen's Bench, the Court of Criminal Appeal, if there is to be an appeal to the House of Lords, the court that has just heard the case on which the appeal is to be taken has to issue a certificate that a point of law of public importance is involved in the case. That is really a statutory phrase—that there is a point of law of public importance in the case. Again in this very lengthy study of the Judicial House of Lords, when all their studies are over, they say that they would recommend this certificate of public importance.

Neither the procedure in the United States nor the procedure in Britain is the same as the procedure in Canada. Here we are proposing public hearings and some precedents on applications for leave to appeal. They do not have that in the United States at all. In Britain you have in practice very little of it and you have to go through these reporter's notes, and while they give some indication I did not find that they carried me much further than rule 19 of the Supreme Court of the United States.

In Canada, while the rule is that a litigant who loses in the provincial Court of Appeal may apply in that provincial court for leave to go on to the Supreme Court of Canada, and he is entitled to go on if he gets it, the Supreme Court Act says that the Supreme Court must act on permission from a provincial court. I might add that it is still intended that it should say that. Nevertheless it is not required that the litigant go through his own court of appeal first. He can go straight to the Supreme Court of Canada. So the position differs from that in Britain and, actually, applications for leave to appeal in the provincial courts have been quite rare in recent years. Most litigants seem to say, "Well, if I lose in the Court of Appeal I can then go to the Supreme Court of Canada and, since I am allowed to go there in the first place and since they have the last word, I might as well go there to start with." I think that is the reasoning that lies behind the fact that in Canada most of the appeals go straight to the Supreme Court of Canada itself. So the position is very different from that in Britain in that respect. Again, as I say, in the United States it differs in that they are not voting in secret session on these petitions with no public hearing whatever. So I think what we are recommending here—and I respectfully suggest it for your consideration—is something of an improvement on both systems. In our judgment, at least, it represents taking advantage of the best in English and American experience but not following either in a slavish way, and being somewhat innovative in our own interest.

Senator Greene: Arising out of that same point, the thought occurs to me as to whether the committee considered—and I apologize if it is in the report, which I have not received and, so, which I have not read—whether or not the panel to consider applications for leave to appeal should move about the country. I ask that because one of the sources of alienation that I have found in certain parts of the country is the fact that all federal institutions are located in Ottawa. I think this fact has been recognized in the setting up of the Federal Court. Is there any thought that the panel from whom you would seek leave should

move about the country, or is there a good reason why the practice should continue that if you want to deal with the Supreme Court of Canada, even in seeking leave to appeal, you have to come to Ottawa?

Professor Lederman: I think this point is a very pertinent one, but the committee did not address itself specifically to this point. So what I say now is my personal opinion. I think it might be a good thing to do, but my own inclination would be, again, to leave that to the Chief Justice and let him decide in conference with his fellow justices as to what they should do. I am sure that if he were to indicate to the Department of Justice that he wanted some travelling panels, then arrangements could be made.

Mr. McKelvey: Could I add something on that point? This point was raised in the discussion in council. It was raised by members of the council from the west primarily, because they are the ones most affected by reason of distance, and it was thoroughly canvassed. But it was not adopted; no motion was made on it and there was no vote. As I recall, the reasoning was that it was rather impracticable to bicycle three members of the court with the necessary entourage all over the country, taking them away from their duties in Ottawa where they should be hearing cases which are heard on their merits. It was considered to be impracticable to ask the Supreme Court of Canada to go on circuit in order to hear these applications for leave to appeal. So it was discussed in council and the conclusion was that it was not desirable.

Mr. Smith: I wonder, Mr. Chairman, if I might make a comment on that point. This is something which has been considered, and I do not think we could say it has been rejected for all time. There were a number of reasons why we felt now would not be an appropriate time to attempt this, including some of the reasons just put forward by Mr. McKelvey. Our conclusion was that we ought to see how the new system would work and what difficulties might be encountered before looking to that type of approach, which might in the future be perfectly sound. We did not feel it was sound at the present time, however. So that has been considered, senator.

Senator Greene: Apart from the political fact that if we do not get it when there is a western Minister of Justice, we never will get it.

[Translation]

Senator Riel: Section 41 says in part:

—is, for any other reason, of such a nature or significance as to warrant decision by it—

This is in reference to "public importance" and to "or any issue of mixed law and fact involved".

Mr. Smith: Not according to my interpretation. This is a third category.

Senator Riel: This is because I find the French version clearer: "ou son importance à tout autre égard". It is not then qualified "of such a nature".

Mr. Smith: I think that both the English and French versions give precisely the same interpretation.

Senator Riel: All right. I wonder what senator Flynn thinks about this.

Senator Flynn: I also think this is another category.

[Text]

The Chairman: Professor Lederman, would you now go on to the next point, which will in part answer the question put by Senator Buckwold?

Professor Lederman: That is point No. 4 in the report. Again, I would like to start by drawing your attention briefly to what the committee itself said in this connection. This is in the supplementary list; it is not a recommendation, but a committee comment, meant to be supportive of the main recommendation:

Certain questionable uses that might be made of appeals as of right in civil cases would be precluded by the abolition of such appeals.

The report then points out the reasons for the change in Britain in 1934. From 1875 to 1934 appeals from the English Court of Appeal to the House of Lords were a matter of right and were automatic if the losing party wanted to go. This was changed in 1934, not because the House of Lords was overloaded, which it was not then, nor is it now, but it was changed then because it was considered that other questionable uses of the right of appeal would be precluded and could be controlled by the House of Lords if permission from the Court of Appeal or the House of Lords was necessary to appeal to the House of Lords. Quotations are given from eminent law Lords as to the reasons. The vice-chairman of the Bar Council, speaking in the House of Commons, which is quoted on page 15 and page 16 said:

There can be no doubt that an unrestricted right of appeal to the House of Lords may be a matter of very great oppression. An unsuccessful though wealthy litigant may at present go as a right to the House of Lords, and that means involving the successful litigant in an enormous amount of expense which may really, in the end, although the decision remains the same, deprive him largely of the fruits of victory. It is as well that that right should be supervised. The right to apply to a committee of the House of Lords, in the opinion of the Bar Council, fully safeguards the interests of the litigant in every way.

Then Lord Atkin said, speaking in the House of Lords:

The great importance of this reform is this, that a rich corporation—or perhaps I might say a strong government department—will not for the future be able in any way to terrorize the person with whom they may have a dispute by a threat that the case will certainly be taken to the House of Lords. I think it is a great advantage that a case will not now come to your Lordships' House unless there are substantial grounds for so taking it either in the opinion of the Court of Appeal or of your Lordships' House.

Lord Hanworth is quoted as follows:

There are some cases which I have in mind, over the past few years, in respect to which certainly an appeal ought not to have been brought, but an appeal was brought for purposes, I may say, other than that of trying to put a wrong decision right. Sometimes a delay is involved in going to your Lordships' House, a delay which may be worth paying for even though the appeal is unsuccessful.

The committee's comment in respect of those reasons from Britain for their change to a leave system in 1934 was simply this:

We presume that there has been a small but significant number of cases in Canada, appeals as of right to

the Supreme Court of Canada under present rules, which would be examples of these abuses. The plenary consent jurisdiction that we recommend for civil cases in the Supreme Court of Canada would put controls in place that would prevent such abuses.

At this point I have to confess that I am a law professor. I spend most of my time in the academic halls, and that is an intellectual presumption as far as I am concerned. In my opinion, it is probably correct to say that if these abuses have occurred in Britain there have been such instances in this country, but I am not in a position to know or quote any specific instances.

Senator Connolly: There is a danger of it.

Mr. McKelvey: Mr. Chairman, I think that is probably much more prevalent than one would think. For example, consider cases involving an ordinary citizen, of limited means, on one side and an insurance company financing the other side, and obviously these are instances on which statistics cannot be obtained. There are probably quite a large number of cases in which the wealthy loser in the court below will apply to the Supreme Court of Canada in the hope that by so doing he will persuade the other party to accept a settlement lower than that of the appeal court.

Expropriation cases are probably a greater source of difficulty, because in most provinces, or in some provinces—allow me to put it that way, as I cannot say “most”—certainly in my province the interest rate payable on an expropriation award until lately has been only 5 per cent, but has now increased to 6 per cent. Obviously, the longer the appropriating authority can drag the thing out, the more money it will make on the interest saved under present-day conditions. I have a strong suspicion that thinking such as this is behind many of the appeals which go to the Supreme Court of Canada. I cannot prove it, but I am very suspicious.

Senator Connolly: The door is open for it.

Mr. McKelvey: The door is open for it, whether I am right or wrong.

Senator Flynn: Mr. Chairman, what is the committee's plan regarding adjournment? Mr. McKelvey wishes to raise a question concerning the problem of retroactivity. It may be a very important point. It might be better for the committee to deal with that matter after lunch.

The Chairman: There is also the question raised by Senator Buckwold, and I would ask Professor Lederman to deal with that. The question was, “Why not raise the figure of \$10,000?” The committee will now adjourn until 2 p.m.

The committee adjourned until 2 p.m.

Upon resuming at 2 p.m.

The Chairman: Before the luncheon adjournment there were two remaining points we were going to discuss. One was clause 10 of the bill, on which Mr. McKelvey wishes to express the views of the Bar council.

Mr. McKelvey: Thank you Mr. Chairman.

You will recall that this morning I read from the committee report that:

The abolition of appeals as of right in civil cases should be made fully effective without delay.

I mentioned that this recommendation of the committee was not approved by the council, although the committee, of course, stands by its own recommendation. The recommendation of the council, which was on a divided vote, was:

That the first subsidiary recommendation....should only apply to cases which have not been commenced in the lower court at the time any enabling legislation takes effect. Strong objections were taken to the Committee's recommendation which would, in effect, make the proposed legislation retroactive by applying to cases actually before the court at the time of legislation and the meeting did not favour this retroactive feature.

I have prepared—and I believe you have now received—copies of a memorandum of authorities which I shall leave with you. It starts out by referring to *Halsbury's Laws of England* which states the general rule that a statute will not be given retrospective or retroactive effect by the courts unless by express words or necessary implication the legislature has demonstrated an intention that the act is to be retroactive.

There are only a couple of minor exceptions to this. One is where the statute deals only with procedure. In that case the courts will give it retrospective effect.

I think all honourable senators realize that no one denies the right of Parliament specifically to enact retroactive or retrospective legislation. If you refer to clause 10(2) of the bill, it says that the relevant sections:

as those sections read immediately before the coming into force of this Act, apply to

(a) appeals to the Supreme Court of Canada in respect of which a notice of application for leave to appeal has been filed, or a notice of appeal has been served...

(b) cases ordered to be removed to the Supreme Court of Canada...

before the coming into force of this Act,...

The legislation in this respect follows the committee's recommendation that it should apply to all cases in the courts with the exception of those where notice of appeal has been given to the Supreme Court.

I would refer you to what I think is a leading statement on this from the decision of the Supreme Court of Canada in *Upper Canada College v. Smith*. I refer you to the statement of Mr. Justice Duff, as he then was, referring to the English case of *Phillips v. Eyre*, where he said:

"Retrospective laws are, no doubt, prima facie a questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law."...

With you permission, Mr. Chairman, I will skip the Latin.

The Chairman: Is that because you do not think that senators understand the Latin?

Mr. McKelvey: I know they all do, but I don't!

Senator Flynn: I am afraid of your accent.

Mr. McKelvey: Then following the Latin:

Accordingly, the court will not ascribe retrospective force to new laws affecting rights, unless by express words or necessary implication it appears that such was the intention of the legislature."

I do not intend to read the whole thing, but about midway down the page it states:

—the rule that statutory enactments generally are to be regarded as intended only to regulate the future conduct of persons is, as Parke B. said in *Moon v. Durden*, in 1848...

"deeply founded in good sense and strict justice"

because speaking generally is would not only be widely inconvenient but

"a flagrant violation of natural justice"

to deprive people of rights acquired by transactions perfectly valid and regular according to the law of the time.

At this point you might wonder whether this law applies to statutes affecting the right of appeal. The decision of Mr. Justice Duff did not apply to that, but later in his judgment he states:

This may be illustrated by a reference to statutes giving or taking away a right of appeal. A right of appeal is, of course, a remedial right and the courts have had to consider frequently the question whether a statute giving or taking away a right of appeal should prima facie be construed as affecting the parties to pending litigation.

He then refers to the leading case, which is the decision of Lord Macnaghten in *Colonial Sugar Refining Co. v. Irving* in the Judicial Committee of the Privy Council, where there is a definite statement that a right of appeal is a substantive right, and in the case of a right of appeal of litigants who have instituted their action or issued their writ of summons, as it would be in most provinces, prior to the date of the coming into force of the statute, the courts have held that, unless the legislature intended otherwise, that is a vested, substantive right and that any statute which takes it away is retroactive or retrospective, and the court will not give effect to it unless Parliament has specifically declared that to be the case.

I then refer to *Hyde v. Lindsay*, in the Supreme Court, which refers to an earlier Supreme Court decision. The case of *Hyde v. Lindsay* dealt with a statute restricting a right of appeal, which is the same type of legislation as your committee now has before it.

Singer v. The King is the reverse situation, where a new right of appeal was created by legislation and the courts held that the new right of appeal could not be retrospective and could not apply to existing cases; it could only apply to cases where the writ of summons was issued after the statute came into force. I direct your attention to the statement at the bottom of page 3, as follows:

The matter is one of substance and of right.

Finally, I refer to what was done at the time of the abolition of the right of appeal to the Judicial Committee of the Privy Council in 1949, at which time Parliament specifically said:

Notwithstanding anything in section three of this Act, an appeal from or in respect of a judgment pronounced in

(a) a judicial proceeding that was commenced prior to the coming into force of this Act, or

(b) a reference made by the Governor in Council or by the Lieutenant-Governor in Council of a province prior to the coming into force of this Act,

lies or may be brought as if that section had not been enacted.

So, in 1949 the abolition of the right of appeal to the Privy Council was only to affect those cases which had not been commenced at that time. As I said, clause 10(2) of the bill before you is retrospective within these authorities. I do not think there can be any question about that statement. It does affect the rights of the litigants in the thousands, or perhaps hundreds of thousands of cases before the lower courts at the time of the coming into force of this legislation who will no longer have the right of appeal to the Supreme Court of Canada, as of right, which they enjoyed at the time of the issuance of the writ.

Senator Greene: Is clause 10(2) not a compromise?

Mr. McKelvey: I would not describe it as a compromise, senator. I do not see how it would be possible to make it apply to any case where leave to appeal has been given or where notice of appeal has been filed. It is intended, as set out in the Canadian Bar Association committee's report, to chop the automatic right of appeal off immediately, except in respect of cases which are then before the Supreme Court of Canada. In respect of the cases before the lower courts at the time of the coming into force of this legislation, their automatic right of appeal to the Supreme Court of Canada will be removed.

Senator Connolly: It is only the automatic right of appeal that you are talking about. If any of the litigants involved in the cases before the lower courts can establish justification for an appeal, an appeal will be allowed with leave?

Mr. McKelvey: Yes, that is correct. It does not deny the right of appeal, as was the case in 1949. The reason I am presenting this to the committee is to impress upon the committee that you are now being asked to enact retroactive legislation, as interpreted by the Judicial Committee of the Privy Council and the Supreme Court of Canada. The Canadian Bar Association council's position is that this should not be done, and that the practice followed in 1949 in respect of the Privy Council should be followed in this respect.

The Chairman: As I understand your comments, Mr. McKelvey, the council of the Canadian Bar Association is not in agreement with the committee which produced this report we have before us.

Mr. McKelvey: That is correct. I might say that this is the only portion of the statute which does not follow the official recommendations of the council of the Canadian Bar Association. Having said that, I really should go on to say that it may be that there are some cases where retroactive legislation is justified, being extreme cases or cases of very great urgency, and, of course, in such cases that practice has been carried out. Our position is that this is not one of those cases. Of course, the committee may consider that it is.

Senator Godfrey: Why is it that you do not feel this is one of those cases? The court is actually overworked at the present time and they are trying to rectify that situation now. It took six or seven years after 1949 before the last case filtered through the Privy Council.

Mr. McKelvey: The committee estimates it would take four or five years for the cases now before the lower courts in Canada to go through all stages.

The Chairman: As I recall it, the last case before the Privy Council was in 1954, approximately five years after the coming into force of the legislation.

Senator Greene: The result of not making it retroactive, then, is to hold up the objective of the bill to catch up with the backlog within a period of four to five years. Is that a fair statement?

Mr. McKelvey: Yes.

The Chairman: Mr. Smith, would you like to comment on that point?

Mr. Smith: Mr. Chairman, I was aware of the reservations of the Canadian Bar Association on this point. I was not aware, until a moment ago, of the way in which Mr. McKelvey was going to present this matter. For that reason, I do not wish to get into a legal argument at this time. However, perhaps I may just take a moment or two to indicate to the committee the reasons that prompted the way in which this has gone forward. There are, of course, the reasons suggested in the special committee report, and Professor Lederman can speak to that aspect of it.

When we looked at it we had in mind the point that Mr. McKelvey has made. There is, of course, jurisprudence to say that had we introduced this without the provision which you are now considering, the Supreme Court could, by following the precedent that it has established, say that it would only apply to new cases, new litigation in the lower courts, and not to any case that was in the course of litigation at the time the act came into force. For this reason, the legislation was made very specific to indicate when it was proposed it would come into force. We took that course, basically, for two reasons. The first reason, as suggested by Senator Greene, is that it would take a number of years to clear up the backlog. It is rather hard to say whether it would take three, four or five years, but the problem to which the legislation is directed would not be fully resolvable, if I may put it that way, in the near future. It would be putting the matter off. The second reason is simply that when we talk about retroactive legislation and vested rights, these are matters which can trigger emotion on all our parts. I think it is well to remember that we are not cutting off absolutely all the avenues of appeal for litigants in the lower courts. If a case is in the course of litigation and there is involved a matter of public importance, or if it falls within either of the two criteria that are contained in the proposed new section 41, then it is open to the Supreme Court of Canada to grant leave for appeal to have that matter decided. It is not cutting it off.

Senator Connolly: More important, it is open to the litigant to apply for leave.

Mr. Smith: That is correct.

Senator Greene: It is changing the procedure rather than the substance.

Mr. Smith: The cases that are affected—and I think this is important—are those where there is now a right of appeal, where \$10,000 or more is involved, and secondly where there is no matter of public importance. Those are the cases we are concerned with. Those are the cases in respect of which the door is being shut, not to an appeal

but to a second appeal. Those are basically the reasons why, having looked at both sides, we came down on the side of proposing legislation that would go into effect immediately. There are a number of other minor points, but I think those are the major ones.

Senator Godfrey: You talk about there being no public importance. Do you not agree with me that you can have a right of appeal under section 41, under the word "significant", even if there is no public importance.

Mr. Smith: Yes, I do most emphatically agree with that. In fact this was a point I was trying to make to Senator Flynn earlier, that there were three criteria established, not just one.

Senator Godfrey: The third one being "significant".

Senator Flynn: The door is wide open.

Senator Godfrey: I thought the third might be a mixture of law and fact, but that is not the third that you are talking about?

Mr. Smith: No. The third is those closing words that we were discussing just before lunch.

Senator Flynn: I should like to hear what Professor Lederman has to say on this. On which side does he fall?

Professor Lederman: I think all I have to do is read the report. I was the research officer of the committee and, strictly speaking, I was not a member of the committee. However, the members of the committee were good enough to treat me for the most part as if I were. This question was debated very carefully in the committee, and gave the committee a great deal of concern. It is a difficult question. I do not really have much to add to what Mr. Smith has said as to the reasons why the committee members came out as they did in favour of a decisive cut off of this automatic privilege of appeal if more than \$10,000 is involved. My personal view is that I agree with this. I agreed with it at the time the committee reached this conclusion, and I still agree with it.

I think at this point it is fair I should tell you that Mr. B. J. MacKinnon, Q. C., who was the chairman of the committee and who would have been here today except that he has been in hospital, is of the same view. I have been in touch with him since I learned he could not be here, and he said that if the Senate committee was interested I was authorized by him to tell the Senate committee that he was in favour of the committee recommendation on this point, and not the modification. It is a difficult issue. I think Mr. McKelvey has presented the other side of the issue to you very fairly and very clearly. It is an issue that we now have to leave with Parliament.

Senator Connolly: At this point could I ask Mr. McKelvey whether the council had a vote on this, or was it simply a consensus?

Mr. McKelvey: The council had a vote on this; the vote was counted and it was about 60-40 in favour.

Senator Connolly: How many are on the council, for the sake of the record?

Mr. McKelvey: There are 400 on the council, but the attendance is usually 100 to 120 at a council meeting. Not all of them show up, of course.

Senator Connolly: I know. I have been at many of them.

Mr. McKelvey: You are familiar with the problem. Perhaps I could add to that. I think it is also fair for me to say that in respect to all of the other votes at that meeting approving the rest of it there was no count; it was overwhelming and it was done on a voice vote. This was the only vote that was counted. I am not here presenting a unanimous view by any means, except I think it is fair to say that the Canadian Bar Association is pretty strongly—"unanimous" is a difficult word to use—against retroactive legislation, and we did not think that the Bar Association should be supporting retroactive legislation.

Senator Flynn: I have read the memorandum and I was aware of the problem. I may say that I fall on the side of the committee, for several reasons. The first reasons, of course, are those that have been mentioned by Mr. Smith and Professor Lederman. Also, I think the decisions quoted in the memorandum refer almost to the rule of interpretation of whether a statute takes away the right of appeal or not. I agree that if there is any doubt we have to say that there is no retroactivity in any statute, especially in a case like that. This legislation, one way or the other, will cut off the right of appeal to the Supreme Court somewhere.

Is it right to say that you have to take the date of the commencement of the action, or the date of the contract or the facts giving rise to the action? I do not think it is very convincing to say that you must have commenced your action before another one rather than having started the dispute before in order to have the right to go to the Supreme Court. The reasons for this legislation are that we have to give the Supreme Court the chance to do its job. When appeals to the Judicial Committee of the Privy Council were abolished it was for another reason. It was because we did not want to go there any more. We then said that all cases that had commenced before the enactment of that legislation could go there if they wanted to. The purpose was entirely different from the purpose of this legislation. To accomplish what we are trying to accomplish here we must necessarily have clause 10 as it is. That is merely my view, with great respect for the contrary opinion of my confrères of the Bar.

Mr. McKelvey: I do not want to answer Senator Flynn. I have told you what we think. However, I would like to comment that apparently the decisions that have held that this is of substance and of right have applied only to cases where the writ or summons has been issued or the case has been commenced. The courts have not gone so far as to put it back to the point where the cause of action arose.

Senator Flynn: I merely point out, if you cut it here, why do you not give the right to all the litigation that could have been started before?

Mr. McKelvey: All I am doing, as you realize, is telling you what the courts have said.

Senator Godfrey: The date of an accident is more logical than the date a diletory lawyer finally gets around to issuing a writ.

Mr. McKelvey: I presume that that was argued in these cases.

Senator Flynn: Some lawyers are slower than others.

The Chairman: If we have disposed of this issue, there was one other issue raised this morning to which an answer has not been given. It was the question raised by Senator Buckwold. Instead of eliminating all the automatic

appeals in cases involving \$10,000 and over, why not raise the amount? The committee covered this on page 9 of its report. Would you say something on this, Professor Lederman? The committee obviously considered what Senator Buckwold was suggesting.

Professor Lederman: The history of appeals in the Supreme Court of Canada—I will not bother you with the details, although I have them here—is, up to this point, of progressively raising that limit. I think at one time it was \$1,000; it was raised to \$1,500, then to \$2,000; and the raise to \$10,000 occurred in 1956. In the committee this was very carefully discussed. We concluded, as the report says, that a more sophisticated means of screening cases worthy of second level appellate review ought to be put in place and that a simple monetary limit does not do it. For instance, there would be no point in simply raising it to \$50,000. Some cases involving \$50,000 have no important principle of law involved and have no issue of public importance or significance. Nevertheless, they do involve more than \$50,000. We did not think that that kind of case should still get through. On the other hand, there have been some famous cases which have involved very small sums. The rent that a tenant might pay or should have paid was the issue in the *Switzman* case, the case on the padlock law. Yet that case was of great importance and obviously should have gone to the Supreme Court of Canada, as it did.

In other words, if you accept the principle that a sophisticated assessment of public importance, an important issue of law, one of national significance and so on, ought to be made, then simply to pick a sum of money and specify it does not do it.

Also inflation was underway when we were writing this report. It was not as bad as it is now, but it was underway, and in that respect, under present conditions, one would find oneself changing the monetary limit pretty often in order to maintain the same figure from year to year. But our main objection was the objection in principle, that it was time to try somehow to get a more sophisticated assessment of what cases are worthy of second level appellate review in the Supreme Court of Canada.

I do not think I can say more than that about the reasons.

Senator Buckwold: The answer certainly satisfies me, Mr. Chairman.

Mr. McKelvey: If I may add to that, that point was discussed by the council and they felt the same way as the committee.

The Chairman: Thank you. This covers all the questions that were raised this morning. Are there any other points?

Senator Flynn: I have just one point for clarification, Mr. Chairman. When I spoke in the Senate I was not too sure about section 7 of the act. I am now satisfied that the provision there meets the problem that I had in mind.

The Chairman: That is the question of interest.

Senator Flynn: Of interest, yes. A judgment of the first court could bear interest, not only from the date of the judgment but from the date of the institution of the action. I wanted to be sure that if the Supreme Court were to award a sum of money, which had been refused in the first instance, it could award that sum with interest from the date of the institution of the Action and not only from the

date of the judgment of the first court. I think this covers that. I was not too sure before, but I think from reading it over and over again that it does, with one possible exception. They use the words "at the rate and from the date applicable to the judgment in the same matter of the court of original jurisdiction." The possible exception, to my mind, is the case where the first court makes a mistake by awarding interest only from the date of the judgment when it could have awarded interest from the commencement of the action. I am not too sure if the Supreme Court is not precluded from correcting that situation now.

Mr. McKelvey: I can answer that, Mr. Chairman, as I know something about the case where the problem first arose. The determination of the right of interest up to date of judgment is primarily a matter of interpreting the law of the province.

Senator Flynn: Indeed, yes.

Mr. McKelvey: Which the Supreme Court of Canada, of course, can do. The problem of interest up to the judgment is a substantive matter to be discussed and dealt with by the court as any other question of law. The problem arose in New Brunswick, by the way, where the trial judge had given a judgment which, under the laws of the province, would have borne interest from the date of judgment. I mean the pre-judgment interest is a matter of substantive law. The trial judge had given a judgment which would automatically carry interest under provincial law. The court of appeal overturned that judgment. The Supreme Court of Canada reinstated it, but nothing was said about interest, and the problem arose as to the jurisdiction of the Supreme Court of Canada to sort of make its judgment retroactive, in effect, to the date of the trial judgment so that interest would run from that date. The matter was resolved by the Supreme Court. I think they decided they could do it. Apparently it was intended by the drafters of the legislation that it should be more specific, that it should be in the statutes so we do not have to rely on the one decision that I know of where the court so held.

Senator Flynn: The point I was making was whether you can have interest from the date of the institution of the action.

Mr. Smith: Senator Flynn, as a consequence of the remarks you made in the debate in the Senate I took a look at the proposed section as it is now written, and my interpretation of that is that it would accommodate whatever civil law rule there may be that would apply as well as whatever common law rule applies, because the closing words are:

... and from the date that would have been applicable to that judgment if it had included a money award.

Senator Flynn: Or "could have been applicable." That is really my point.

Mr. Smith: Perhaps on that point, if you were to look at the French version—

Senator Flynn: Maybe it is clearer in French.

The Chairman: We will apply Bill 22 to the interpretation!

Mr. Smith: Yes, the Official Languages Act should apply.

Senator Connolly: With respect to the matter of awarding interest and the date from which it should run, is that

not really a matter of discretion for the court of first instance?

Senator Flynn: Not necessarily, no.

Senator Connolly: It is up to the judge there to decide it.

Senator Neiman: In Ontario does that not come under the rules of procedure?

Mr. McKelvey: It is a question of law.

Senator Connolly: It is a question of law, all right, but it is a matter for the judge in the first instance, is it not, if he is making a monetary award, to decide when the interest will run from?

Mr. McKelvey: That is right, senator, and because it is a matter of applying the provincial laws of interest there is no problem with the Supreme Court of Canada. There never has been with the Supreme Court of Canada dealing with a question of interest up to the date of the trial judgment, because the court is really deciding the same substantive question—because up to that point it is a substantive question. The problem arises after the initial judgment.

Senator Flynn: If you take an action to recover a sum of money based on a note, for example, of course the interest will be guided by the terms of the note; but I am speaking of the action in damages in Quebec. Until four or five years ago the judgment would bear interest from the date of the judgment and not from the date of the action or the date of the institution of the action. Now it can go back to the date of the institution of the action, and it makes quite a difference sometimes because the judgment may come only three or four years after.

Mr. McKelvey: That is still a matter of provincial law.

Senator Flynn: Yes, agreed.

Mr. Smith: It seems to me that those words accommodate whatever provincial law you have before the Supreme Court—that would be my point—whatever that law may be.

Senator Flynn: I wanted to get some assurance, anyway.

Mr. Smith: To the extent that my view of the matter can assure you, then that would be my view.

Senator Riel: I hope it is not the view of the courts.

Senator Godfrey: Relax. It is my view, too.

Senator Flynn: Then I have no more worries.

Senator Buckwold: The item I want to raise is a relatively minor one, but it was the subject of a fairly heated speech in the Senate by one of the Opposition members. I am referring to the question of the definition of distance from the capital region. I think we have to mention it because it was raised, and I can visualize a problem, in a very extreme case, if we said, for example, "within 25 miles of the capital region." We do not know whether that is as the crow flies, or by the nearest railroad, or by main highway.

Senator Croll: Give or take 10 miles?

Senator Flynn: As the birds fly?

Senator Buckwold: As I say, one of our honourable senators made quite a speech on this item.

The Chairman: Just one?

Senator Buckwold: Well, I think we should have it settled, if we are here to have proper legislation. Is there any need to clarify that? I envisage a case, for example, of a very close decision of the court, and then some smart lawyer like Senator Flynn finds out that one of the judges in this close decision lives 26 miles away, and therefore, under the act, was literally disqualified. I know that that will not happen, but strange things do happen, especially when you have smart lawyers like Senator Flynn. Should that be clarified, or should it be generalized in a different way?

Mr. Smith: May I make one point? There is now a five-mile limit. You have the same problem, I suppose. Secondly, it does seem to me, as with all legislation, that you have a problem of applying general words to specific facts, and there is no way that we could write a law to envisage where every judge of the Supreme Court now, and in the future, might live, and therefore to enable us to say, "Well, he can live in Embrun but he cannot live in Masson." I think that would be, as a matter of drafting, just impossible.

Senator Buckwold: Why have it at all?

Mr. Smith: Well, there are two reasons. One is that this is a normal provision, that the Supreme Court sits in Ottawa, and there has been this provision for 99 years.

Senator Buckwold: That should not necessarily be a reason.

Mr. Smith: Well, the second and more practical reason is for the purpose of travel expenses. We have to know where a judge is supposed to reside.

Senator Connolly: Senator John Macdonald made a very impassioned plea, and objected most strenuously to the idea of legislating the judges' and the registrars' indemnity, and the idea of condemning them to live in a place like Ottawa!

Senator Flynn: You would understand that.

Senator Connolly: I can understand that argument coming from people from Toronto, for example, but he made a very strong plea.

Senator Flynn: I do not know if it is in the federal law, but the judges of Quebec, I think, are appointed with a residence, let us say, in Quebec City or the vicinity, or in Montreal or the vicinity. I am referring to the order in council that appoints them.

Mr. Smith: If I might add to that, I think it is generally true to say that all superior, district and county court judges are appointed either in respect of a district or a county, or in respect of a court where there is a limitation. I think that limitation is also for the Supreme Court of Ontario, where they are obliged to live in Toronto.

Senator Croll: Is there a distance from Toronto for the Supreme Court of Ontario? What is it?

Mr. Smith: There is a provision, and it happens, strangely enough, to be in the Judges Act, and it is in the city of Toronto or within five miles thereof. That is a very old provision.

Senator Godfrey: A lot of judges have their clubs as their addresses, and have never slept in Toronto for years.

The Chairman: I do not know of any judge who has refused an appointment to the Supreme Court because he did not want to live within five miles of Ottawa.

Senator Godfrey: I know someone who resigned from the Supreme Court for that reason.

The Chairman: But he accepted the appointment first.

Senator Buckwold: I am satisfied to leave it, as long as, in the opinion of those who drafted it, it will not create any problem.

Mr. Smith: I cannot say that it will not create any problem, but I can say that I do not think it can be drafted any more precisely, and it is quite a liberal rule, as these things go.

Senator Fergusson: Has there ever been any problem in the past about the five miles distance that was required by the previous act?

Mr. Smith: That rule was established with the first act, back in 1875, and means of transportation and living styles have of course changed since then. I cannot really say whether there has been any problem, but presumably, with an increased population and so forth, five miles is somewhat restrictive.

Senator Fergusson: I can understand the five-mile limit applying when we drove horses—it was a long distance; but we have not been travelling that way for a long time, and I was wondering if in more recent years there has been any problem.

Senator Riel: It is a problem of inflation.

Senator Croll: What happens when we change to kilometers?

Senator Connolly: You think of everything.

The Chairman: Now we are stumped.

Senator Laird: If we have kicked this around enough, I move that the bill be reported without amendment.

Senator Connolly: I second that.

The Chairman: It is moved by the honourable Senator Laird that the bill be now reported without amendment. Is it agreed?

Hon. Senators: Agreed.

Senator Flynn: That is the consolation for the time taken on the Immigration Act.

The Chairman: This is a Senate bill, and since we have given serious consideration to the report of the Committee of the Canadian Bar Association, I suggest that the report of the Committee be printed as an appendix to the proceedings, together with the council's two reports.

Senator Flynn: I so move.

Mr. McKelvey: The report on the amendments would include my letter, as President, to the Minister of Justice, informing him about the amendments to be made.

The Chairman: Does the committee agree?

Hon. Senators: Agreed.

Senator Connolly: On that, Mr. Chairman, from the floor, can we express our appreciation to Mr. Smith, Mr.

McKelvey and Professor Lederman for a fine presentation on a very interesting bill?

The Chairman: I was going to do that on behalf of the committee, and thank you, Senator Connolly. Thank you, gentlemen.

The committee adjourned.

Ottawa, Tuesday, November 12, 1974

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-3, to provide for a continuing revision and consolidation of the statutes and regulations of Canada, met this day at 3.30 p.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us now Bill S-3, to provide for a continuing revision and consolidation of the statutes and regulations of Canada. I am going to ask Mr. du Plessis of the Department of Justice to give us an opening statement.

Before doing that honourable senators, I should tell you that Mr. du Plessis did not expect to be here this afternoon. There was a mix-up in the arrangements and I understand that he is expected to appear before a House of Commons committee at 3.30 p.m. However, he is prepared to stay a little while, and I suggest that we proceed now and see how long it will take.

Mr. R. L. du Plessis, Legal Adviser, Department of Justice: Honourable senators, this bill is intended to provide for the establishment of a permanent statute revision committee within the Department of Justice. In the past whenever there was a need for a revision or a consolidation of the statutes there was always the necessity to pass a specific act to set up a commission. Then that commission would get down to work and proceed to go over all the laws that had been passed since the previous consolidation and produce a new revision of the statutes. This has been very time-consuming. I think that under that arrangement the periods between revisions ranged from about 18 to 25 years. Then, when the commission was set up, the time it took to consolidate the statutes ran sometimes to four or five years because there was a tremendous amount of work to be done.

So the general idea behind this bill is that if an organization is set up that would look after this work and would be concerned with the revision of statutes on a continuing basis and have the staff available at all times to work on an ongoing consolidation, this would certainly facilitate the preparation of revisions, and I think the end result would be that the law would certainly be more readily available at all times.

This commission is going to be established within the Department of Justice, and in addition to preparing revisions and consolidations of statutes it will look into the possibility of producing loose-leaf editions, and would also have the authority to make editions of its work available in microfilm form or by electronic data processing. This, of course, would permit the retrieval of statutory information from computer terminals and by such other devices as automated typing or high-speed printing.

This is a very general statement, honourable senators, and I wonder now if anybody has any particular questions about the bill.

Senator Robichaud: Is it contemplated, Mr. Chairman, that the three members of this commission would be engaged on a full-time basis or on a part-time basis and do other duties within the department?

Mr. du Plessis: I think this is something we will have to work out on the basis of the actual practice and experience that we will gather. I think at the outset the idea is that they shall be on a full-time basis because there is a considerable amount of work to be done. Just preparing for the publication of a revision involves a tremendous amount of work. Even proof-reading constitutes a very big job.

Senator Robichaud: But according to the terms of reference as I see them, I cannot see that any time in the future this commission can be relieved of this specific function because with the pile of legislation to be processed this has to be on a full-time basis. Then when you consider the regulations as well, it seems that there will be no end to its work.

Senator Buckwold: I gather from a cursory reading of the bill that we would be setting up a commission which would continually revise statutes. I would also presume that they would put the regulations into some kind of order and bring them up to date, as required. But I also gather that their work would in fact always be passed on for approval to what we presently have, a Standing Joint Committee of the Senate and the House of Commons on Regulations and other Statutory Instruments. I gather that from clause 7 on page 3. Am I correct in that assumption?

Mr. du Plessis: Yes. It is anticipated that there will be a more direct involvement of Parliament in this whole process.

Senator Flynn: Are you referring to the joint committee?

Mr. du Plessis: Yes.

Senator Flynn: But there is no specific reference in this bill to the joint committee.

Senator Buckwold: Well, they are speaking of a committee of the House of Commons or a committee of the Senate, "or such Committee of both Houses of Parliament, as may be designated for the purpose of the examination and approval."

Senator Neiman: A supplementary question on that, Mr. Chairman. Why was the present joint committee not designated specifically? It seems to me to be the logical committee.

The Chairman: But it is not the same thing at all. The Joint Committee on Regulations and other Statutory Instruments is intended to examine the regulations and to report on whether they are proper. This commission is merely intended to consolidate the regulations, just as it is intended to consolidate the existing law but not to enact new law or to examine the law or to report on the law.

Senator Greene: Mr. du Plessis, in your preamble you seemed to refer almost synonymously to the words "consolidate" and "revise". I do not think you mean that. What, to you, is the difference between "consolidation" and "revision"?

Mr. du Plessis: When you are speaking generally I think you can use the words interchangeably, but then when we get down to specific technicalities of this bill we make a distinction between the two words because there is a slightly different meaning intended. But in general parlance it has been common to use them almost synonymously. Do you want me to try to explain the difference as it appears in the bill between "consolidation" and "revision"?

Senator Greene: Yes, I think it is clear, not by the consolidation, but by the breadth of the alleged revision of it.

Senator Laird: Just as in clause 6.

Senator Greene: And in clause 5.

Senator Laird: Clause 6.(f) and clause 6.(g)—particularly those two.

Mr. du Plessis: I might point out that these—and particularly paragraph 6.(f)—are very similar in wording to the kind of power that has existed in previous revision acts since the turn of the century. The only new aspect in paragraph 6.(f) is that to be found in the latter part, which was brought about by the fact that we now have the Official Languages Act, and it may be necessary under certain circumstances to make, as it is stated here, "the form of expression of the statute in one of the official languages more compatible with its expression in the other official language," but the first part of (f) is taken almost word for word from previous revision acts.

Senator Greene: Then in clause 5 you state that the commission should have power to—and you use the words "revise and consolidate" the public general statutes of Canada. But there is the word "and" joining two words of identical meaning.

Mr. du Plessis: No, senator, the word "consolidate" here is the physical putting together of amendments or the combining of acts that have to be combined. But the word "revise" relates more to the actual text where certain corrections or minor amendments may be required.

Again, these words—"arrange", "revise" and "consolidate"—are the words that have been used in the past.

Senator Fergusson: Clause 5.(f) reads in part:

make such minor improvements in the language of the statutes as may be required to bring out more clearly the intention of Parliament.

How do the advisers really know what is the intention of Parliament?

Senator Greene: That is what the courts are for.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: The work of the commission as to the statutes will be reviewed by a parliamentary committee.

The Chairman: Clause 7 provides for that.

Senator Fergusson: Yes, I see that and have now read it.

Senator Flynn: In 1938 and 1939 I, as a student at the law faculty of Laval, had a part-time job on the commission for revision of the Quebec statutes. I wonder if the process is the same as it was in those days. We picked up the revised statute starting at chapter 1, cut the title, stuck it on a page in a big book and so on.

Mr. du Plessis: Basically that is the work carried out by the clerical and support staff.

Senator Flynn: Instead of doing that only once every 15 or 18 years, it will now be done on a yearly or day-to-day basis?

Mr. du Plessis: That is correct.

Senator Flynn: Each time an act is passed the work of revision or adjustment will start.

Mr. du Plessis: Yes, so that we would be already up to date and ready to produce bound volumes within a shorter period of time.

Senator Flynn: You would probably be able to publish codifications of certain acts on a yearly basis.

Mr. du Plessis: This is possible, although I do not know whether it is contemplated in this legislation.

Senator Flynn: I believe it is.

Mr. du Plessis: Except under the loose-leaf authority.

Senator Flynn: That is correct.

Senator Godfrey: Am I correct that the office consolidations which are published now do not have the authority of law?

Mr. du Plessis: That is correct.

The Chairman: The same thing is provided in this bill in clause 9.(4).

Mr. du Plessis: In other words, the loose-leaf edition, as contemplated here, would be in somewhat the same situation as the office consolidation which is published.

Senator Robichaud: May I take it, then, that the text of this bill is more or less the same text, with the same terms of reference which were given from time to time to a committee or commission, and when their job was completed they were disbanded, but this will become more or less permanent? Is that the only difference in the legislation?

Mr. du Plessis: That would be the principal difference.

Senator Flynn: I do not believe the problem of regulations was included in the legislation we passed for the 1970 revised statutes.

Mr. du Plessis: No.

The Chairman: That is new, and I see that it takes cognizance of the joint committee, because under clause 19.(3) it is provided that:

A regulation that is included in the Consolidated Regulations stands permanently referred to any Committee or Committees or Parliament established under section 26 of the *Statutory Instruments Act*.

Senator Flynn: Yes, I believe it is already covered, but I asked for purposes of clarification.

Senator Greene: Does clause 7.(2) mean that nothing the commission recommends will have any legal effect until an act of Parliament is passed implementing it?

Mr. du Plessis: That is correct, and that is the purpose of the model bill set out in the schedule.

Senator Flynn: I am not too sure about that. I think that the bill would refer only to the Revised Statutes of Canada, but I can understand that if a clarification of an act were published without any change made by the commission it would have its value. The court will just check that it is the law, and that is all. The clarification of a given act could be published. The schedule refers only to the publication of the next Revised Statutes of Canada.

Mr. du Plessis: That is correct, the complete revision of all the statutes.

Senator Flynn: But the partial work of the commission which will be published will have value. If some changes are proposed, maybe it would require approval of Parliament, but if it merely adjusts the wording according to the amendments made to it, then, in my opinion, it will be valid as such.

Mr. Hopkins: It will be very useful, though.

Senator Flynn: Yes, if there were any change, it probably could be contested, but if there was no change other than those provided by an act of Parliament, it would be valid.

The Chairman: Yes, in my opinion that is correct, Senator Flynn. Are there any other questions?

Senator Godfrey: I have not had an opportunity to compare sections 15 to 21 of the *Statutory Instruments Act*, which are now repealed, with the provisions contained in this bill. Do I understand that, other than the fact that they are kept up to date, there is no change in principle in the consolidated revision?

Mr. du Plessis: I am sorry; I did not quite follow you.

The Chairman: Which clause do you have in mind, senator?

Senator Godfrey: I am referring to clause 24, which provides that: "Sections 15 to 21 of the *Statutory Instruments Act* are repealed." The previous clauses, starting with clause 11, presumably, to clause 23 replace sections 15 to 21 of the *Statutory Instruments Act*.

Mr. du Plessis: That is correct.

Senator Godfrey: Except that it adds the keeping up to date, is there any change in principle between the consolidated revision of this bill and the repealed sections of the *Statutory Instruments Act*?

Mr. du Plessis: No, there is not.

The Chairman: Mr. Ryan has just arrived. We have made very good progress, Mr. Ryan, and I believe we can now complete our work.

Senator Laird: Mr. Chairman, during the course of the debate in the Senate I recall asking Senator Stanbury, who was the sponsor of the bill, whether there was any intention of requiring in this legislation that there be consultation at stated periods, and he said no, that it would not be practicable, or something to that effect. Is this the way you two gentlemen feel with respect to this?

Mr. J. W. Ryan, Assistance Deputy Minister, (Legislation), Department of Justice: Because of the manner in which a statutory revision will be dealt with in the future, under this bill it did not seem to be desirable. Perhaps I can explain it that way. The timing will depend upon two

things, the work of the revision commission, plus the acceptance by the parliamentary committee on revision; and one will be pushing against the other.

Senator Laird: Yes; that is a good answer.

The Chairman: Are there any other questions? Shall I report the bill?

Senator Flynn: I move that the bill be reported without amendment.

The Chairman: Senator Flynn moves that the bill be reported without amendment. Is it agreed?

Hon. Senators: Agreed.

The committee adjourned.

ANNEX "A"

REPORT OF THE SPECIAL COMMITTEE
OF THE CANADIAN BAR ASSOCIATION
ON THE CASELOAD OF THE
SUPREME COURT OF CANADA

THIS STUDY WAS FINANCED BY A GENEROUS
GRANT FROM THE DONNER CANADIAN FOUNDATION

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CRIMINAL APPEALS: *Present rules should be continued*

REFERENCE CASES: *Present rules should be continued*

SUBSIDIARY RECOMMENDATIONS AND COMMENTS

- (1) *The abolition of appeals as of right in civil cases should be made fully effective without delay.*
- (2) *Present procedures for hearing applications for leave to appeal should be continued.*
- (3) *Judicial definition of elements of public importance should govern when applications for leave to appeal are granted or refused.*
- (4) *Certain questionable uses that might be made of appeals as of right in civil cases would be precluded by the abolition of such appeals.*
- (5) *The Supreme Court of Canada should remain the general and final court of appeal for Canada on all subjects. The Court should not be limited to so-called federal questions.*
- (6) *The Supreme Court of Canada should continue at its present size of nine judges, but, if our principal recommendation does not bring the necessary relief from case overload after a trial period, enlarging the Court should then be considered.*
- (7) *The present Court year of three sessions should be continued.*

- (8) *The Judges cannot delegate their essential functions, so the assistance available from law clerks is severely limited.*
- (9) *The present practice of full oral argument in the Supreme Court of Canada should be continued.*

CONCLUSION

APPENDIX A — *Selected statutory provisions and references respecting the jurisdiction of the Supreme Court of Canada.*

APPENDIX B — *Statistics concerning caseloads:*

The Supreme Court of Canada

*The House of Lords and the Judicial
Committee of the Privy Council*

The Supreme Court of the United States

APPENDIX C — *Procedures of the Supreme Court of the
United States.*

APPENDIX D — *References concerning the proposed 'federal
question' limitation.*

F O R E W O R D

When the then President of the Canadian Bar requested me to act as Chairman of this Committee, he assured me that he would appoint a strong and representative committee. Mr. Farris kept his word, and the members of the Committee were George S. Cumming, Q.C., of British Columbia; J. H. Laycraft, Q.C., of Alberta; Keith Turner, Q.C., of Manitoba; François Mercier, Q.C., of Quebec; D. M. Gillis, Q.C., of New Brunswick; and I. Norman Smith, for many years the distinguished Editor of the Ottawa Journal, and the only lay member.

As the result of a generous grant from the Donner Foundation, we were able to retain the services of Professor W. R. Lederman of Queen's University as our Research Officer. We are grateful to Professor Lederman for the extensive and generous assistance he has given to the Committee, both in the original research he was requested to do, and in the drafting of our Report. I would like also to make special reference to Mr. Smith, to which, I am sure, the other members of the Committee, all lawyers, will not take exception. He brought perspectives and perceptions to our thinking and our drafting that was invaluable, and his enthusiasm for our work was contagious. Finally I should note that, with the authorization and support of the Chief Justice of Canada, the staff of the Court were most co-operative and helpful in assisting us in the collection and compilation of statistics, and I am happy to acknowledge, with thanks, that assistance.

The Committee had a number of meetings and extensive correspondence before coming to their conclusions, and it was

only after the fullest consideration of the alternatives that we reached our major conclusion and recommendation. We do believe that if our recommendations are adopted they will solve, at least for this generation, the problems of the congested lists with the consequent delays which now exists.

Mr. Gillis does not agree with the Committee's major recommendation, recommending that all civil appeals be by way of leave only, but he does not propose to write a dissenting statement on that part of the Report.

On behalf of the Committee I have pleasure in presenting this Report.



B. J. MacKinnon,
Chairman.

To: The Executive,
The Canadian Bar Association,
Ottawa.

REPORT OF THE SPECIAL COMMITTEE OF THE CANADIAN BAR ASSOCIATION
ON THE CASELOAD OF THE SUPREME COURT OF CANADA

INTRODUCTION

The Supreme Court of Canada, as the country's general and final court of appeal, occupies a most important place in our constitution. It forms the apex of our system of courts, providing a second and final level of appellate review for the whole of Canada. Nearly all of the cases of the Supreme Court of Canada come to it on appeal from the respective Provincial Courts of Appeal and the new Federal Court of Appeal. (A few reference cases do come directly from the Federal Government.) Precedents embodied in the reasoned decisions of the nine judges of the Supreme Court of Canada are authoritative throughout Canada, and afford vital leadership to the country in the interpretation and development of the law on all subjects. Proper performance of this function of judicial leadership requires that the judges of the Supreme Court have adequate time for the full hearing of argument, for research, study, reading, consultation among themselves and the writing of full reasons for their decisions.

The number of cases to which a court of nine judges can give proper personal attention in a single year has definite upper limits, and, unfortunately, too many cases are now being filed on appeal with the Supreme Court of Canada, to which the Court is required by law to give a full hearing. This overload has been progressively increasing during the past five years.

The position we have reached is that it now takes about two years from the date notice of appeal is filed until the case concerned can be given a full hearing, although hearings are held sooner by way of exception in cases of great urgency. There is accordingly a serious backlog of cases ready to be heard that appears to be getting longer as time goes on.

But certain screening rules do limit the selection of cases for the Supreme Court of Canada. Are the rules defective? Or is the Court too small? And what about its methods and procedures? Are they as efficient and adaptable as they should be to meet changing demands?

In the early part of 1972, the Honourable John Turner, then Minister of Justice for Canada, was prompted by this situation to request the President of the Canadian Bar Association to arrange for a study of the case overload of the Supreme Court of Canada, a study that would include suggested remedies. The Executive of the Association responded by constituting the Committee now making this report.

The Committee has not been able to function as a Royal Commission might have done, with full-time salaried commissioners, a large research staff and public hearings. It was not intended that it should do so. Moreover, it is doubtful that a large scale Royal Commission was or is necessary in any event. There was already much on the record in legal and political literature concerning the issues we were to deal with, and some judicial statistics were available or could be compiled. This was true

also for corresponding jurisdictional problems respecting the final appeal courts of Great Britain and the United States, so that we have been able to examine very helpful comparative history and data.

We do fully appreciate that the status and functions of the Supreme Court of Canada are matters of great public interest and concern to all our citizens, and not just to members of the legal profession. Moreover we also fully appreciate that there are several political, constitutional, cultural and legal issues of great importance concerning the Supreme Court of Canada, in addition to the issue of a properly limited selection of cases to be given prompt and full hearing by the Court. But the latter problem — the problem of case overload — is the extent of our mandate, so we have endeavoured to stay with that issue and its implications.

PROPOSALS FOR CHANGE

Proper screening rules for a final and second-level appellate court should do two things. They should allow through for full hearing and decision each year only the limited number of cases that the court can reasonably consider and decide within that year, and, secondly, and more importantly, this numerically limited group should consist only of those cases most worthy of the attention of our final appellate court because they are cases raising issues of significant public importance. These are cases having implications going beyond the purely individual interests of the particular parties to them.

Our current difficulties with excessive caseload in the Supreme Court of Canada arise from the fact that the court's present **jurisdictional** rules do not accomplish the limitation of cases for full hearing in accordance with these simple principles. The main defect in the present rules is that they allow civil cases automatic entitlement for full hearing if more than \$10,000 is involved in money or property. The result is that too many civil cases are automatically entitled to full hearing in the Supreme Court of Canada at the option of the appellant, and many of these turn out not to be worthy, by the test of public importance, of such second-level appellate review.

We believe that there would be no denial of justice in reformed screening rules that corrected this situation, because all potential appellants to the Supreme Court of Canada have had at least two full judicial hearings and decisions before they approach the Supreme Court of Canada for a further hearing. In the general run of these cases then, we consider it reasonable that the would-be appellant should be granted the full second appellate review he seeks only if he can demonstrate, in a brief preliminary hearing before a panel of judges, that his case does indeed involve an issue of significant public and national importance. But, the position under present rules is that the judges of the Supreme Court of Canada now have to attempt to deal with too many cases in a year, including some of little public importance. This makes more difficult prompt and careful consideration of the cases that are of significant public importance.

Our statistical studies of the annual total of cases given full hearing by the Supreme Court of Canada, the House of Lords in Britain and the Supreme Court of the United States, show that these courts can be expected to turn out a total of about 120 decided cases each year, most of which are reported with full reasons. The Supreme Court of Canada and the Supreme Court of the United States have usually been near each year to the figure of 120, whereas the usual annual output of the House of Lords and the Judicial Committee of the Privy Council combined, in Britain, is from one-half to two-thirds of this figure. The above-mentioned level of output by the Supreme Court of Canada has been constant for many years, and we conclude that this comes close to being the reasonable maximum annual workload for the Court.

But many more than this number of cases are now pressing in upon the Supreme Court of Canada for attention each year. In April, 1973, on the eve of the opening of the Spring session of the Supreme Court of Canada, court officials reported that over 100 cases were ready for hearing, and that about 77 of them would be inscribed for the coming session, which was to commence the last Tuesday in April and would finish near the end of June. But also the officials pointed out that only 40 to 50 of those cases, at best, could actually be heard before Summer, so that the rest would have to be carried over to one of the other sessions of the Court year. (There are three sessions of the Court each year.) In addition, cases on the docket in early April, 1973, awaiting perfection of documents, but entitled to

be listed for full hearing when documents were perfected, numbered about 200. Before leaving these questions of time and delay, the interval between hearing and judgment should be mentioned. Judgment is usually given by the Supreme Court on a date reasonably soon after the hearing. In the great majority of cases the interval is less than six months, frequently much less. So the delays that concern us occur between notice of appeal and time of hearing, not between the latter date and the time of giving judgment.

Speaking now of civil cases only we note that there are, in the main, two ways the losing litigant in a Provincial Court of Appeal or the Federal Court of Appeal may carry a further appeal to the Supreme Court of Canada under present rules. He has the right, at his option, to file an appeal with the Supreme Court of Canada if his case involves more than \$10,000 in money or property. If the case does not involve more than \$10,000, the losing litigant cannot go forward to a full hearing by the Supreme Court of Canada unless he asks for and obtains permission to do so. He may apply for such leave either to the Appeal Court that has just decided his case (a Provincial Court of Appeal or the Federal Court of Appeal), or he may apply for leave directly to the Supreme Court of Canada itself. Either court may then grant or refuse leave in its discretion. If either court grants leave, then the applicant's full hearing in the Supreme Court of Canada is assured. Moreover, if the Provincial Court of Appeal or the Federal Court of Appeal refuses leave, nevertheless the applicant then may still

seek leave from the Supreme Court of Canada and proceed if it is granted.

Nearly all applications for leave in recent years have been made directly to the Supreme Court of Canada. The procedure in the Supreme Court is that the would-be appellant files his application for leave, along with some simple documents about his case, and then is given a brief oral hearing by a panel of three Supreme Court Justices. If at least two of the judges decide that the case has significant elements of public importance, then leave to appeal is granted. Otherwise, leave is refused and the decision of the lower court stands as the final determination of the case.

From 1949 to the present, about twenty percent of the cases heard and decided by the Supreme Court of Canada have been before that Court because the Court itself granted leave to appeal. Most of the other eighty percent were civil cases involving in recent years more than \$10,000, and thus were before the Supreme Court of Canada because the losing litigant in the Court of Appeal concerned exercised his unqualified right of appeal under the present rules. Our statistical studies also show that, starting with the year 1970, the overload of cases beyond the reasonable maximum, as shown by the repeated carry-over of scheduled cases to later sessions of the Court, was serious and is becoming more serious each year. The three sessions of the Court in 1972 were each faced with carry-overs of about 50 cases from the immediately previous session.

There is another statistical indicator of trouble. In the period 1961-1971, the output of decided cases was

reasonably constant, and so was the proportion of cases that were before the Court because it had consented to hear them (that is, about 20%). Taking the annual totals of applications for leave made to the Supreme Court of Canada in the period 1961-71, these rose sharply and the percentage of them granted fell sharply in this period. The former figure rises from 53 in 1961 to 127 in 1971, and the percentage granted falls from 38% in 1961 to 17% in 1971. Since the number of cases before the Court for decision annually because leave was granted has remained reasonably constant, it follows that the excessive burden is coming from sharply increased numbers of appeals as of right because more than \$10,000 is involved. We concluded that this was the principal cause of the serious case overload of the Supreme Court of Canada. Moreover, the harm done goes beyond the serious delays thus caused in the decision of all cases. It is clear that the proportion of applications for leave to appeal granted is being severely reduced for the class of cases where leave is needed under present rules, as this is the only point at which the Supreme Court itself now has any control of the total number of cases it must schedule for hearing.

THE PRINCIPAL RECOMMENDATION: That all appeals in civil cases to the Supreme Court of Canada should require leave from a panel of judges. Appeals as of right in such cases should be abolished.

Accordingly, our principal proposal for change may now be stated. We recommend abolition of appeals as of right in civil cases to the Supreme Court of Canada. These appeals are presently provided for in section 36 of the Supreme Court Act, where the principal category is the appeals made available

on the basis of a money value involved in the case of more than \$10,000. But also the section includes appeals concerning a writ of habeas corpus or mandamus without any test of monetary value. In other words, we are recommending that all appeals in civil cases should henceforth require leave.

We also recommend that the system for granting or refusing leave should remain as it is at present, that is, that the applicant may seek leave at his option either from the Supreme Court of Canada or from the lower Court of Appeal in which his case has just been decided. Either Court would continue to have full discretion to grant or refuse leave, but an applicant refused in the lower Court could nevertheless then seek leave directly from the Supreme Court of Canada, and proceed if leave were granted there.

In this connection, we did consider the idea of seeking a remedy for the Court's case overload, originating as it does with civil appeals as of right, by simply raising the monetary minimum for such cases from \$10,000 to some higher figure. We concluded that this solution was objectionable in principle. In Canadian Society today, we believe that money or property alone, at any figure of monetary value, is simply not acceptable as the basis of an exclusive privilege to appeal as a matter of right to the Supreme Court of Canada. A better and more sophisticated assessment of public importance is in our view appropriate, before appeals are allowed to proceed. Extending the requirement for leave to appeal to all civil cases, as we are recommending, provides for such an assessment.

CRIMINAL APPEALS: Present rules should be continued.

Criminal appeals to the Supreme Court of Canada are, strictly speaking, outside our terms of reference, but we have nevertheless found it necessary to consider them, since they form an important part of the caseload of the Supreme Court of Canada. We recommend that there should be no change in the present rules for the appeal of criminal cases to the Supreme Court of Canada. Most criminal appeals now require permission of the Supreme Court of Canada itself on an application for leave to appeal, and the exceptions where the accused or the prosecution may appeal as of right seem justified, and involve only a small number of cases. Details about the present criminal appeal rules are given in Appendix A.

REFERENCE CASES: Present rules should be continued.

Finally we should mention the special class of cases known as reference cases. The Supreme Court Act provides that the Governor-in Council (in effect the Federal Cabinet) may put to the Supreme Court of Canada important questions of law or fact, which the Court is then required to answer, with reasons, after appropriate hearings and consideration, as if it were giving judgment on an ordinary appeal. Usually these questions relate to the constitutional validity of Federal or Provincial statutes, under the distribution of legislative powers between the Federal Parliament and the Provincial Legislatures found in the British North America Act. But they are not necessarily so confined. The usefulness or even the propriety of reference cases has been a subject of some controversy, but they are well established

as constitutionally valid, there are relatively few of them, and those there are almost invariably involve public issues of great current importance. Thus, from the point of view of our Committee, reference cases are not numerous enough to threaten the Supreme Court of Canada with an overload, and they raise issues of public importance worthy of the attention of the Supreme Court of Canada. There are corresponding provisions in the judicature statutes of each of the Provinces for reference cases directed by the Provincial Cabinet to its own Provincial Court of Appeal. If the Provincial reference statutes contemplate appeal to the Supreme Court of Canada, the Supreme Court Act requires the Supreme Court of Canada to entertain such appeals. For the reasons given respecting the Federal reference cases we recommend that this requirement should continue, and leave to appeal not be a requirement of such hearings.

SUBSIDIARY RECOMMENDATIONS AND COMMENTS

As necessary supplements to our main recommendation, we have the following further recommendations and comments.

The abolition of appeals as of right in civil cases should be made fully effective without delay.

(1) The amendment to the Supreme Court Act necessary to implement our chief recommendation would of course apply to all future cases. But, in addition, we recommend that it should apply from the date it becomes law to all causes of action that may have arisen before that time, and also to all cases pending in the lower courts at that time. The only exception should be

cases already decided in a Provincial Court of Appeal or the Federal Court of Appeal respecting which notice of appeal to the Supreme Court of Canada had already been filed as of right under the previous legislation. It may be alleged that there is here some prejudice to vested rights. Nevertheless, we maintain that our proposals on timing and effect should be accepted for two reasons:

First: Unless the amendment is made effective to this degree, the correction of the present excessive caseload of the Supreme Court could take as much as four or five years.

Second: The applicant with a current case in the lower courts involving more than \$10,000, to whom the amendment would apply, does not, thereby, lose all right of appeal to the Supreme Court of Canada. He would have the right under the new rules to apply for leave to appeal and to proceed if leave were granted.

Present procedures for hearing applications for leave to appeal should be continued.

(2) The procedure for seeking leave to appeal obviously becomes of much greater importance than it was formerly, if our principal recommendation is adopted. There would then obviously be many more applications for leave to appeal than at present.

In the Supreme Court of Canada, three panels of three of the nine-man Court could sit simultaneously if necessary, to hear applications for leave to appeal and the present practice rule covering time limits on all argument (not more than 35 minutes) for such applications could be enforced,

with exceptions to be left to the discretion of the Court. If application for leave is made to a Provincial Court of Appeal or the Federal Court of Appeal, we assume that the present rules for such applications would continue to apply. Statistics show that relatively few applications for leave have been made to Provincial Courts of Appeal since 1949. In particular they have been rare since 1965. It is possible that they might take on some renewed importance if our principal recommendation is accepted. Leaves have been granted sparingly in the Provincial Courts of Appeal up to this time and only in matters of substantial importance to litigants generally, and we expect that this would continue to be the case. Accordingly, if our main recommendation is accepted, we do not believe the granting of leave by Provincial Courts of Appeal or the Federal Court of Appeal would get out of hand and overburden the Supreme Court of Canada with an excessive number of cases. Further, in a country as large and diverse as Canada, the Provincial Courts might, in certain instances, perceive elements of public importance to their areas in an application for leave to appeal that might not be apparent to the Supreme Court in Ottawa.

In other words, if our principal recommendation is accepted, we are also recommending that present procedures for processing applications for leave to appeal to the Supreme Court of Canada should be continued. We expect these procedures to be equal to the greater burden of applications that would then develop, but, should experience prove this not to be so, then other methods would have to be considered.

Judicial definition of elements of public importance should govern when applications for leave to appeal are granted or refused.

(3) We have said that the grant of leave to appeal to the Supreme Court of Canada should depend upon the presence in the case offered for appeal of some element of public importance beyond the purely individual concerns of the parties to the case. We have given some thought to further definition in some detail of these elements of public importance, and we have concluded that specific definition and development of such criteria should be left with the Courts themselves, as they pass upon the great variety of applications for leave that would come before them. We do recommend that in some instances the judges publish reasons for granting or refusing leave, so that some precedents to guide litigants and lawyers would be on the record. We note in support of our general position in this respect that the Law Lords of the House of Lords in Britain and the Justices of the Supreme Court of the United States have determined the elements of public importance that lead to the granting of leave to appeal in those countries. In Britain since 1934, all appeals to the House of Lords have been by leave only, and in the United States, since 1925, nearly all appeals to the Supreme Court of the United States have required the leave of that court. We believe that judicial perceptions of what is of public importance should be trusted here in Canada, as they are in Britain and the United States.

Nevertheless, we might, in concluding our discussion on this point, mention a few examples of elements of public importance that could make a case eligible for the grant of

leave to appeal. An obvious one is a case wherein the constitutional validity of a Provincial or Federal statute is challenged under our Federal Constitution. Another instance might be a case where there have been conflicting interpretations in the lower courts of certain provincial statutory provisions or of some basic common law principle. Still a third example might be the need to settle the interpretation of some new provision of a federal statute. This list is certainly not exhaustive, and no exhaustive list could be made. This is why we recommend the flexibility that comes from leaving these criteria to judicial determination.

Certain questionable uses that might be made of appeals as of right in civil cases would be precluded by the abolition of such appeals.

(4) Mention has just been made of the fact that all appeals to the House of Lords as a court in Britain from the English Court of Appeal have, since 1934, been appeals by leave only. This leave has to be obtained either from the Court of Appeal or from a panel of three judges of the House of Lords. From 1875 to 1934, the losing litigant in the English Court of Appeal could appeal as of right to the House of Lords. This was totally changed in 1934, not because the House of Lords as the final court had an excessive caseload, but because the multiplicity of appeals available at the option of the losing party was open to certain abuses. These were described in the British Parliamentary debates of 1934 as follows,

Sir Walter Greaves-Lord (Vice Chairman of the Bar Council)

"There can be no doubt that an unrestricted right of appeal to the House of Lords may be a matter of very great oppression. An unsuccessful though

wealthy litigant may at present go as a right to the House of Lords, and that means involving the successful litigant in an enormous amount of expense which may really, in the end, although the decision remains the same, deprive him largely of the fruits of victory. It is as well that that right should be supervised. The right to apply to a committee of the House of Lords, in the opinion of the Bar Council, fully safeguards the interests of the litigant in every way."

Lord Atkin:

"The great importance of this reform is this, that a rich corporation - or perhaps I might say a strong government department - will not for the future be able in any way to terrorize the person with whom they may have a dispute by a threat that the case will certainly be taken to the House of Lords. I think it is a great advantage that a case will not now come to your Lordships' House unless there are substantial grounds for so taking it either in the opinion of the Court of Appeal or of your Lordships' House."

Lord Hanworth:

"There are some cases which I have in mind, over the past few years, in respect to which certainly an appeal ought not to have been brought, but an appeal was brought for purposes, I may say, other than that of trying to put a wrong decision right. Sometimes a delay is involved in going to your Lordships' House, a delay which may be worth paying for even though the appeal is unsuccessful."

We presume that there has been a small but significant number of cases in Canada, appeals as of right to the Supreme Court of Canada under present rules, which would be examples of these abuses. The plenary consent jurisdiction that we recommend for civil cases in the Supreme Court of Canada would put controls in place that would prevent such abuses.

The Supreme Court of Canada should remain the general and final court of appeal for Canada on all subjects. The Court should not be limited to so-called federal questions.

(5) We come now to the discussion of a different and

important proposal for limiting the number of cases going to the Supreme Court of Canada, a proposal which we have rejected for reasons that should now be explained. We refer to the so-called "federal question" limitation. The proposal is that the Supreme Court of Canada should not have jurisdiction at all concerning cases which arise only under Provincial law, according to the list of Provincial legislative subjects in the British North America Act. The final court for such a case would then be the Court of Appeal of the Province in which the case arose. The Supreme Court of Canada would concern itself only with cases arising under Federal laws and statutes, according to the list of Federal powers in the British North America Act, and with the interpretation of the British North America Act itself. If such a limitation were feasible and desirable, it would considerably reduce caseload pressure on the Supreme Court of Canada. In our view, it is neither feasible nor desirable. This is a complex question. Nevertheless, our reasons for rejecting such a solution may be briefly explained at this point. (We give further information and references on the subject in Appendix D.)

It is alleged that the United States affords an example of successful limitation of the caseload of the Supreme Court of that country by the limitation of its jurisdiction to "federal questions" in the manner mentioned. The United States, unlike Canada, does have a complete dual system of courts that operate side by side, a complete system of State courts in each State, and a complete system of Federal courts culminating in the Supreme Court of the United States. It is further alleged that, for the most part, questions under State laws are tried

only in State courts and questions under Federal laws and the Constitution of the United States are tried only in Federal courts. This is said to be a dualism that is natural and right in a federal country. We are told that we should do this in Canada, and thus become more truly federal.

The foregoing views, we suggest, are based on serious misunderstandings about federal states in general and the American judicial system in particular. Statistics show that up to half of the cases tried in the American Federal Courts are cases arising entirely under State laws, because of the "diversity of citizenship" jurisdiction of the Federal courts. This means that where the parties are citizens of different States either party may take a case involving State laws to the Federal Trial Court. Appeals in the Federal court system may then reach the Supreme Court of the United States. On the other hand, some statutes of the Congress (Federal laws) specify that issues under them must be tried only in State courts of general jurisdiction and not in Federal courts at all. Furthermore, State laws can be reviewed in the Supreme Court of the United States for offence to the standards of the Constitutional Bill of Rights, for example State laws alleged to deny due process of law or equal protection of the laws. Though Federal courts do, of course, hear cases arising under Federal laws, nevertheless, the net result is, briefly, that the dualism of the system of courts in the United States is simply not an elegant federal dualism at all, and was never intended to be by the founding fathers of the American Constitution. Accordingly,

the idea that there is some important limiting effect from the so-called "federal question" restriction in the United States on the caseload of the Supreme Court of that country is largely an illusion.

There is a second and deeper reason why a "federal question" limitation is not feasible, let alone desirable. In real life at the level of everyday affairs, Federal and Provincial laws in Canada are interpenetrating in numerous ways. Federal tax liability for John Jones may turn not just on a section of the federal Income Tax Act, but also on a point of property law under the Civil Code of Quebec. The validity of a promissory note may turn not only on the Federal Bills of Exchange Act, but also on the contract law of Ontario. Federal bankruptcy law is inextricably intertwined with Provincial property and contract laws. The constitutional validity of a Provincial statute cannot be determined unless and until that statute has been authoritatively construed for its true meaning. And so one could go on. Moreover, there are issues of private and public international law that cannot be confined to a single province. The basic common law is common to nine provinces, and much uniform Provincial statute legislation has been enacted. The same points of course can be made about the United States, where Federal and State laws also interpenetrate in a multitude of ways. As indicated, the Americans have recognized this.

The Special Committee of the Senate and the House of Commons on the Constitution of Canada has recommended that the jurisdiction of the Supreme Court of Canada be limited to

jurisdiction over matters of Federal law and constitutional law, with respect to any Province that wishes this arrangement. We reject this proposal as unsound, because we think it is based on a misunderstanding of the way in which legal issues arise for decision in the courts of a federal state. We note that the Canadian Bar Association has also rejected this proposal of the Parliamentary Committee, by a resolution passed in plenary session in September, 1972. We agree with the resolution, and we affirm that the Supreme Court of Canada should, in our opinion, remain the general and final court of appeal for Canada on all subjects, Federal and Provincial, as it is at present. Unlike the United States, Canada has for the most part a single system of courts dealing with all subjects, whether Federal or Provincial, at the trial level and at the intermediate levels of appeal. It is both logical and desirable then that the mandate of the final national court of appeal should also cover all legal subjects, whether Federal or Provincial.

The Supreme Court of Canada should continue at its present size of nine judges, but, if our principal recommendation does not bring the necessary relief from case overload after a trial period, enlarging the Court should then be considered.

(6) Another proposal considered and rejected was that the number of Supreme Court justices should be increased, to eleven judges or to some higher number. Our conclusion is against this for a number of reasons. Nine judges, by conference and consultation, can keep in constant touch with one another, establish consistent themes and generally act in a beneficial collective way. This would be increasingly difficult

for a larger number. The Supreme Court of the United States has managed successfully with nine judges since 1837. The Supreme Court of Canada usually sits in panels of five, occasionally in panels of seven, and on certain occasions as a full court of nine. This gives considerable flexibility, and ensures that on succeeding cases there is at least one judge common to both. If our principal recommendation should fail to bring the necessary relief from case overload to the Supreme Court of Canada, then increasing the total number of judges should be considered. However, we do believe that our principal recommendation would be effective.

The parallel in this matter with the Supreme Court of the United States is remarkable. In 1925 most of the cases reaching that Court were appeals as of right by choice of the litigating parties and the Court had fallen two years behind in its hearing of cases. The Congress changed the rules by statute in 1925 so that, from that year, nearly all cases required the leave of the Supreme Court itself before they could be heard there. Very quickly this brought the caseload under control and the Supreme Court of the United States has been able to keep control and keep current ever since then. It is true that the total raw docket of the Supreme Court of the United States has increased rapidly, reaching a total in 1972 of over 4,500 cases. The task of the Justices in screening out those cases to be denied leave to appeal is obviously very great. Chief Justice Burger appointed a distinguished study group under Professor Paul Freund of Harvard

University to consider the problem. This Committee produced its report in December of 1972 and we have studied it carefully. We describe the present American system for processing applications for leave to appeal, and the main features of the Freund Report in Appendix C. At this point it is enough to say that some Justices of the Supreme Court of the United States think their Court is in trouble again, for the first time since 1925; other Justices think it is not in trouble and that everything is still under control. The Freund Committee agrees with the former group. The issues are proving highly controversial in the United States.

The pressure of applications for leave to appeal on the Supreme Court of the United States today is very much greater than the pressure that exists now or that may be expected in the near future to come upon the Supreme Court of Canada. We believe that, in general, the United States experience since 1925 with consent jurisdiction supports the validity of our principal recommendation.

Two other related matters now require attention.

The present Court year of three sessions should be continued.

(7) We considered whether the Supreme Court of Canada should sit for a longer period each year than it does now, and we concluded that, given the personal nature of the judicial function, the present court year is long enough. It is about the same as the present court years in the United States and Britain. We do not believe that there is a solution for the present excessive caseload of the Supreme Court of Canada in

more sitting days and longer hours. Figures for the three annual sessions of the Supreme Court of Canada are given in Appendix B, for the years 1969, 1970, 1971 and 1972. The judges need time for contemplative study, for consultation with one another and for the careful writing of their opinions. The so-called vacation periods are heavily used for these purposes.

The judges cannot delegate their essential functions, so the assistance available from law clerks is severely limited.

(8) It has also been suggested that the judges would get through more work if they had more research assistants. As we have already pointed out, judicial functions are functions that must be performed personally. The judge cannot delegate. Intelligent young law clerks can be very helpful in marginal ways, but there is no solution in this direction for major problems of case overload.

The present practice of full oral argument in the Supreme Court of Canada should be continued.

(9) Finally, we considered the fact that the Supreme Court of Canada has no time limits on the argument of counsel, when a full hearing is in progress. Accordingly, the natural question is whether the Supreme Court could get through more cases if it did put time limits on argument by counsel, as is done in the Supreme Court of the United States. We think this would be regrettable, and we do not recommend it. In this respect Canada has always followed the British tradition of emphasis on oral argument, rather than the American tradition of reliance on extensive documentation and very severely

limited oral argument. The former is the tradition of the House of Lords and the Judicial Committee of the Privy Council, the latter is the procedure of the Supreme Court of the United States. We consider that oral argument is effective in exposing quickly the points at issue, and in developing the reasons for and against them, which is of great benefit to the Court and Counsel. We believe that, if our principal recommendation is accepted, the present practice of unlimited oral hearings can be continued without overburdening the Court. If it should turn out that we are wrong about this, then the Court would be in a position to impose some time limitations in certain cases.

CONCLUSION

The Supreme Court is a keystone in the arch of the democratic structure and society of Canada, and Canadians have come to look upon it with pride. It is part of their citizenship. But presumably even the Supreme Court of Canada is not above the ageless law of change that governs all life. Conscious of this, and with great respect for the Court, the Committee undertook the task assigned to it. We trust that the recommendations we have made and the reasons we have given will assist in the public discussion that would necessarily precede amendments of the Supreme Court Act and other relevant statutes.

APPENDIX A

SELECTED STATUTORY PROVISIONS AND
REFERENCES RESPECTING THE JURISDICTION
OF THE SUPREME COURT OF CANADA

- (a) The Supreme Court Act, Revised Statutes of Canada, 1970, Chapter S-19; as amended by Chapter 44, 1st Supplement, Revised Statutes of Canada, 1970.

25. Any five of the judges of the Supreme Court shall constitute a quorum and may lawfully hold the Court. R.S., c. 259, s. 25.

35. The Supreme Court shall have, hold and exercise an appellate, civil and criminal jurisdiction within and throughout Canada. R.S., c. 259, s. 35.

1. Section 36 of the *Supreme Court Act* is repealed and the following substituted therefor:

"36. Subject to sections 40 and 44, an appeal to the Supreme Court lies on a question that is not a question of fact alone, from a final judgment or a judgment granting a motion for a nonsuit or directing a new trial of the highest court of final resort in a province, or a judge thereof, pronounced in

(a) a judicial proceeding where the amount or value of the matter in controversy in the appeal exceeds ten thousand dollars, or

(b) proceedings for or upon a writ of *habeas corpus* or *mandamus*."

37. An appeal lies to the Supreme Court from an opinion pronounced by the highest court of final resort in a province on any matter referred to it for hearing and consideration by the lieutenant governor in council of that province whenever it has been by the statutes of that province declared that such opinion is to be deemed a judgment of the highest court of final resort and that an appeal lies therefrom as from a judgment in an action. R.S., c. 259, s. 37.

38. Subject to sections 40 and 44, an appeal to the Supreme Court lies with leave of the highest court of final resort in a province from a final judgment of that court where, in the opinion of that court, the question involved in the appeal is one that ought to be submitted to the Supreme Court for decision. R.S., c. 259, s. 38.

2. Section 39 of the said Act is repealed and the following substituted therefor:

"39. Subject to sections 40 and 44, an appeal to the Supreme Court lies on a question of law alone with leave of the Supreme Court, from a final judgment of a court of a province (other than the highest court of final resort therein) the judges of which are appointed by the Governor General, pronounced in a judicial proceeding where an appeal lies to that highest court of final resort, if the consent in writing of the parties or their solicitors, verified by affidavit, is filed with the Registrar of the Supreme Court and with the registrar, clerk or prothonotary of the court from which the appeal is to be taken."

40. No appeal to the Supreme Court lies under section 36, 38 or 39 from a judgment in a criminal cause, in proceedings for or upon a writ of *habeas corpus*, *certiorari* or prohibition arising out of a criminal charge, or in proceedings for or upon a writ of *habeas corpus* arising out of a claim for extradition made under a treaty. R.S., c. 259, s. 40.

41. (1) Subject to subsection (3), an appeal lies to the Supreme Court with leave of that Court from any final or other judgment of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, whether or not leave to appeal to the Supreme Court has been refused by any other court.

(2) Leave to appeal under this section may be granted during the period fixed by section 64 or within thirty days thereafter or within such further extended time as the Supreme Court or a judge may either before or after the expiry of the thirty days fix or allow.

(3) No appeal to the Supreme Court lies under this section from the judgment of any court acquitting or convicting or setting aside or affirming a conviction or acquittal of an indictable offence or, except in respect of a question of law or jurisdiction, of an offence other than an indictable offence.

(4) Whenever the Supreme Court has granted leave to appeal, the Supreme Court or a judge may, notwithstanding anything in this Act, extend the time within which the appeal may be allowed. R.S., c. 259, s. 41; 1956, c. 48, s. 3.

42. Notwithstanding anything in this Act, the Supreme Court has jurisdiction as provided in any other Act conferring jurisdiction. R.S., c. 259, s. 42.

43. Where the right to appeal is dependent on the amount or value of the matter in controversy the amount or value may be proved by affidavit, and it shall not include interest subsequent to the day on which the judgment to be appealed from was pronounced or any costs. 1956, c. 48, s. 4.

44. (1) No appeal lies to the Supreme Court from a judgment or order made in the exercise of judicial discretion except in proceedings in the nature of a suit or proceeding in equity originating elsewhere than in the Province of Quebec and except in *mandamus* proceedings.

(2) This section does not apply to an appeal under section 41. R.S., c. 259, s. 44; 1956, c. 48, s. 5.

3. Section 44A of the said Act is repealed and the following substituted therefor:

"44A. Notwithstanding any other Act of the Parliament of Canada, all applications to the Supreme Court for leave to appeal thereto shall be heard and determined by the Court and any three judges of the Court constitute a quorum for the purpose of hearing and determining such an application, except that in the case of an application for leave to appeal from a judgment of a court

(a) quashing a conviction of an offence punishable by death, or

(b) dismissing an appeal against an acquittal of an offence punishable by death, including an acquittal in respect of a principal offence where the accused has been convicted of an offence included in the principal offence,

any five judges of the Court constitute a quorum."

55. (1) Important questions of law or fact concerning

(a) the interpretation of the *British North America Acts*;

(b) the constitutionality or interpretation of any federal or provincial legislation;

(c) the appellate jurisdiction as to educational matters, by the *British North America Act, 1867*, or by any other Act or law vested in the Governor in Council;

(d) the powers of the Parliament of Canada, or of the legislatures of the provinces, or of the respective governments thereof, whether or not the particular power in question has been or is proposed to be exercised; or

(e) any other matter, whether or not in the opinion of the Court *ejusdem generis* with the foregoing enumerations, with reference to which the Governor in Council sees fit to submit any such question;

may be referred by the Governor in Council to the Supreme Court for hearing and consideration; and any question concerning any of the matters aforesaid, so referred by the Governor in Council, shall be conclusively deemed to be an important question.

(2) Where a reference is made to the Court under subsection (1) it is the duty of the Court to hear and consider it, and to answer each question so referred; and the Court shall certify to the Governor in Council, for his information, its opinion upon each such question, with the reasons for each answer; and the opinion shall be pronounced in like manner as in the case of a judgment upon an

appeal to the Court; and any judge who differs from the opinion of the majority shall in like manner certify his opinion and his reasons.

(3) Where the question relates to the constitutional validity of any Act that has heretofore been or is hereafter passed by the legislature of any province, or of any provision in any such Act, or in case, for any reason, the government of any province has any special interest in any such question, the attorney general of the province shall be notified of the hearing, in order that he may be heard if he thinks fit.

(4) The Court has power to direct that any person interested, or, where there is a class of persons interested, any one or more persons as representatives of such class, shall be notified of the hearing upon any reference under this section, and such persons are entitled to be heard thereon.

(5) The Court may, in its discretion, request any counsel to argue the case as to any interest that is affected and as to which counsel does not appear, and the reasonable expenses thereby occasioned may be paid by the Minister of Finance out of any moneys appropriated by Parliament for expenses of litigation. R.S., c. 259, s. 55; 1956, c. 48, s. 7.

References by Senate or House of Commons

56. The Court, or any two of the judges thereof, shall examine and report upon any private bill or petition for a private bill presented to the Senate or House of Commons, and referred to the Court under any rules or orders made by the Senate or House of Commons. R.S., c. 259, s. 56.

62. (1) Where the legislature of any province of Canada has passed an Act agreeing and providing that the Supreme Court has jurisdiction in any of the following cases, namely:

(a) of suits, actions or proceedings in which the parties thereto by their pleading have raised the question of the validity of an Act of the Parliament of Canada, when in the opinion of a judge of the court in which the same are pending such question is material;

(b) of suits, actions or proceedings in which the parties thereto by their pleadings have raised the question of the validity of an Act of the legislature of such province, when in the opinion of a judge of the court

in which the same are pending such question is material;

the judge who has decided that such question is material shall at the request of the parties, and may without such request, if he thinks fit, in any suit, action or proceeding within the class or classes of cases in respect of which such Act so agreeing and providing has been passed, order the case to be removed to the Supreme Court for the decision of such question, whatever may be the value of the matter in dispute, and the case shall be removed accordingly.

(2) The Supreme Court shall thereupon hear and determine the question so raised and shall remit the case with a copy of its judgment thereon to the court or judge whence it came to be then and there dealt with as to justice appertains.

(3) There shall be no further appeal to the Supreme Court on any point decided by it in any such case, nor, unless the value of the matter in dispute exceeds five hundred dollars, on any other point in such case.

(4) This section applies only to cases of a civil nature. R.S., c. 259, s. 62.

(b) Other Acts Conferring Jurisdiction upon the Supreme Court of Canada.

(1) The Federal Court Act, Revised Statutes of Canada, 1970, Chapter 10, 2nd Supplement.

31. (1) An appeal to the Supreme Court lies on a question that is not a question of fact alone from a final judgment or a judgment directing a new trial of the Federal Court of Appeal, other than a judgment or determination under section 28, pronounced in a proceeding where the amount or value of the matter in controversy in the appeal exceeds ten thousand dollars.

(2) An appeal to the Supreme Court lies with leave of the Federal Court of Appeal from a final or other judgment or determination of that Court where, in the opinion of the Court of Appeal, the question involved in the appeal is one that ought to be submitted to the Supreme Court for decision.

(3) An appeal to the Supreme Court lies with leave of that Court from any final or other judgment or determination of the Federal Court of Appeal, whether or not leave to appeal to the Supreme Court has been refused by the Federal Court of Appeal.

(4) For the purpose of this section, the amount or value of the matter in controversy in an appeal may be proved by affidavit, and shall not include interest subsequent to the day on which the judgment to be appealed from was pronounced, or any costs.

32. An appeal to the Supreme Court lies from any decision of the Federal Court of Appeal in the case of a controversy between Canada and a province or between two or more provinces.

33. (1) An appeal to the Supreme Court under this Act shall be brought within sixty days from the pronouncement of the judgment or the determination appealed from (in the calculation of which July and August shall be excluded) or within such further time as a judge of the Court of Appeal may either before or after the expiry of those sixty days fix or allow, by depositing a notice of appeal with the Registrar of the Supreme Court.

(2) All parties directly affected by the appeal shall be served forthwith with a copy of the notice of appeal and evidence of service thereof shall be filed with the Registrar of the Supreme Court.

(3) A copy of the notice of appeal as deposited with the Registrar of the Supreme Court shall be filed in the Registry of the Federal Court.

(4) The notice of appeal may limit the subject of the appeal to a part of the judgment or determination complained of.

34. Every appeal from the Federal Court of Appeal set down for hearing before the Supreme Court shall be entered by the Registrar of the Supreme Court on the list for the province in which the action, matter or proceeding that is the subject of the appeal was tried or heard by the Court, or if such action, matter or proceeding was partly heard or tried in one province and partly in another, then on the list that the Registrar thinks most convenient for the parties to the appeal.

(2) A note on the Schedule to An Act to amend the Supreme Court Act (R.S.C., 1970, c.44, 1st Supplement), as further amended by Schedule II to the Federal Court Act (R.S.C., 1970, c.10, 2nd Supplement).

The second of the two schedules heavily amends the first. For the most part, they deal with Acts other than the Supreme Court Act which confer jurisdiction on the Supreme Court of Canada to hear appeals in some cases coming directly from certain federal boards, commissions or other tribunals. The net effect is to abolish such direct appeals to the Supreme Court of Canada and to send them instead to the new Federal Court of Canada. An example is the National Transportation Commission. The schedules should be consulted for full detail.

In four cases, separate provisions for appeals to the Supreme Court of Canada survive, though they seem to add little, if anything, to what rights of appeal would be without them under the Supreme Court Act and the Criminal Code. The references are as follows:

Bankruptcy Act, R.S.C., 1970, c.B-3, s.164.

Companies Creditors Arrangement Act, R.S.C., 1970, c.C-25, s.15.

National Defence Act, R.S.C., 1970, c.N-4, s.208.

Winding-Up Act, R.S.C., 1970, c.W-10, s.108.

In the above cases, leave of the Supreme Court of Canada itself is required before appeals may be heard there, so this is in harmony with the Committee's principal recommendation. In the case of the National Defence Act, appeal does lie as of right to the Supreme Court of Canada if a judge of the Court Martial Appeal Court has dissented. This parallels the general provisions of the Criminal Code of Canada respecting appeals to the Supreme Court of Canada. (See (3) below). This too is in harmony with the Committee's recommendation that there should be no change in the present rules for criminal appeals.

- (3) The Criminal Code, Revised Statutes of Canada, 1970, Chapter C-34.

Appeals to the Supreme Court of Canada

618. (1) A person who is convicted of an indictable offence other than an offence punishable by death and whose conviction is affirmed by the court of appeal may appeal to the Supreme Court of Canada

- (a) on any question of law on which a judge of the court of appeal dissents, or
- (b) on any question of law, if leave to appeal is granted by the Supreme Court of Canada within twenty-one days after the judgment appealed from is pronounced or within such extended time as the Supreme Court of Canada or a judge thereof may,

for special reasons, allow.

- (2) A person

(a) who is acquitted of an indictable offence other than

- (i) an offence punishable by death, or
- (ii) by reason of the special verdict of not guilty on account of insanity,

and whose acquittal is set aside by the court of appeal, or

(b) who is tried jointly with a person referred to in paragraph (a) and is convicted and whose conviction is sustained by the

court of appeal,
may appeal to the Supreme Court of Canada on a question of law. 1953-54, c. 51, s. 597; 1956, c. 48, s. 19; 1960-61, c. 43, s. 27; 1968-69, c. 38, s. 63.

619. Notwithstanding any other provision of this Act, a person

(a) who has been sentenced to death and whose conviction is affirmed by the court of appeal, or

(b) who is acquitted of an offence punishable by death and whose acquittal is set aside by the court of appeal,

may appeal to the Supreme Court of Canada on any ground of law or fact or mixed law and fact. 1960-61, c. 44, s. 11.

620. (1) A person who has been found not guilty on account of insanity and

(a) whose acquittal is affirmed on that ground by the court of appeal, or

(b) against whom a verdict of guilty is entered by the court of appeal under subparagraph 613(4)(b)(i),

may appeal to the Supreme Court of Canada.

(2) A person who is found unfit, on account of insanity, to stand his trial and against whom that verdict is affirmed by the court of appeal may appeal to the Supreme Court of Canada.

(3) An appeal under subsection (1) or (2) may be

(a) on any question of law on which a judge of the court of appeal dissents, or

(b) on any question of law, if leave to appeal is granted by the Supreme Court of Canada within twenty-one days after the judgment appealed from is pronounced or within such extended time as the Supreme Court of Canada or a judge thereof may, for special reasons, allow. 1968-69, c. 38, s. 64.

621. (1) Where a judgment of a court of appeal sets aside a conviction pursuant to an

appeal taken under section 603 or 604 or dismisses an appeal taken pursuant to paragraph 605(1)(a) or subsection 605(3), the Attorney General may appeal to the Supreme Court of Canada

(a) on any question of law on which a judge of the court of appeal dissents, or

(b) on any question of law, if leave to appeal is granted by the Supreme Court of Canada within twenty-one days after the judgment appealed from is pronounced or within such extended time as the Supreme Court of Canada or a judge thereof may, for special reasons, allow.

(2) Where leave to appeal is granted under paragraph (1)(b), the Supreme Court of Canada may impose such terms as it sees fit. 1953-54, c. 51, s. 598; 1956, c. 48, s. 20; 1960-61, c. 44, s. 12; 1968-69, c. 38, s. 65.

622. No appeal lies to the Supreme Court of Canada unless notice of appeal in writing is served by the appellant upon the respondent within fifteen days

(a) after the judgment of the court of appeal is pronounced where the appeal may be taken without leave, or

(b) after leave to appeal is granted, where leave is required,

unless before or after the expiration of that period further time is allowed by the Supreme Court of Canada or a judge thereof. 1953-54, c. 51, s. 599.

623. (1) The Supreme Court of Canada may, on an appeal under this Part, make any order that the court of appeal might have made and may make any rule or order that is necessary to give effect to its judgment.

(2) An appeal to the Supreme Court of Canada that is not brought on for hearing by the appellant at the session of that court during which the judgment appealed from is pronounced by the court of appeal, or during the next session thereof, shall be deemed to be abandoned, unless otherwise ordered by the Supreme Court of Canada or a judge thereof. 1953-54, c. 51, s. 600.

Appeals by Attorney General of Canada

624. The Attorney General of Canada has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that Government as the Attorney General of a province has under this Part. 1953-54, c. 51, s. 601.

(Note that criminal appeals not covered by the above sections are covered by section 41 of the Supreme Court Act, quoted in (a) above.)

APPENDIX B

STATISTICS CONCERNING CASELOADS:

THE SUPREME COURT OF CANADA

THE HOUSE OF LORDS AND THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL

THE SUPREME COURT OF THE UNITED STATES

SUPREME COURT OF CANADA

Table 1

Number of Cases Decided, 1961-71

	<u>Reported</u>	<u>Unreported</u>	<u>Total</u>
1961	79	22	101
1962	91	30	121
1963	72	39	111
1964	90	32	122
1965	78	40	118
1966	83	20	103
1967	65	45	110
1968	107	27	134
1969	85	31	116
1970	84	35	119
1971	76	50	126

SUPREME COURT OF CANADA

Table 2

Applications for Leave to Appeal to
The Supreme Court of Canada Granted or Refused
by the Court
 1961-71

Year	LEAVES GRANTED			Leaves Refused	TOTAL	Percentage Granted
	Reported Cases	Unreported Cases	Total			
1961	17	3	20	33	53	38%
1962	16	3	19	48	67	28%
1963	13	3	16	47	63	25%
1964	14	3	17	46	63	27%
1965	17	4	21	58	79	27%
1966	12	1	13	60	73	18%
1967	21	7	28	65	93	30%
1968	21	3	24	64	88	27%
1969	17	3	20	81	101	20%
1970	14	3	17	91	108	16%
1971	17	5	22	105	127	17%

Notes: (1) In reported cases, the reporter refers in the head-note to leave having been granted, if the case came before the Court on that basis. This is the source of the figures for leave granted--reported cases.

(2) For unreported cases, the assumption is made that the number of them before the Court because leave was granted would be relatively half the proportion found in respect of reported cases. This is a generous enough assumption, because unreported cases are less likely to have been worthy of the grant of leave, and are more likely to have been before the Court as of right.

(3) Leaves refused are listed in the table of motions given in each annual volume of the Supreme Court Reports.

SUPREME COURT OF CANADA

Table 3

Proportion of Reported Cases in which
Leave was Granted by the
Supreme Court of Canada,
1961-71

1961 - 21%	1967 - 32%
1962 - 18%	1968 - 20%
1963 - 18%	1969 - 20%
1964 - 16%	1970 - 17%
1965 - 22%	1971 - 22%
1966 - 14%	

(Leaves granted in reported cases are given in Table 2, and the total number of reported cases annually, i.e. in each annual volume of the Supreme Court Reports, is given in Table 1.)

SUPREME COURT OF CANADA

Table 4

Remanets from Previous Session

<u>Term - 1963</u>		<u>Term - 1968</u>	
Jan. Session	- 0	Jan. Session	- 14
Apr. Session	- 0	Apr. Session	- 0
Oct. Session	- 10	Oct. Session	- 13
<u>Term - 1964</u>		<u>Term - 1969</u>	
Jan. Session	- 0	Jan. Session	- 15
Apr. Session	- 10	Apr. Session	- 0
Oct. Session	- 11	Oct. Session	- 0
<u>Term - 1965</u>		<u>Term - 1970</u>	
Jan. Session	- 16	Jan. Session	- 12
Apr. Session	- 0	Apr. Session	- 24
Oct. Session	- 0	Oct. Session	- 30
<u>Term - 1966</u>		<u>Term - 1971</u>	
Jan. Session	- 0	Jan. Session	- 38
Apr. Session	- 0	Apr. Session	- 10
Oct. Session	- 12	Oct. Session	- 30
<u>Term - 1967</u>		<u>Term - 1972</u>	
Jan. Session	- 8	Jan. Session	- 62
Apr. Session	- 9	Apr. Session	- 52
Oct. Session	- 11	Oct. Session	- 43

Situation as the October Session (1972) Approaches

Cases ready for hearing - 112 (includes 43 Remanets) (West - 37, Atlantic - 6, Quebec - 44, Ontario - 25). About 80 to 85 of the above cases will be inscribed for October, but, only 40 to 50 cases can be heard in a session at best.

Cases on the Docket waiting for perfection of documents, but entitled to hearing when documents perfected--about 200.

SUPREME COURT OF CANADA

Table 5

Duration of Sessions and of the Court Year

<u>1969 Term</u>	<u>From</u>	<u>To</u>	<u>Total Days</u>
January Session	Jan. 28 -	March 31	60
April Session	Apr. 22 -	June 30	70
October Session	Oct. 7 -	Dec. 22	77
Xmas Vacation	Dec. 20 ('68) -	Jan. 28	37
Easter Vacation	Mar. 31 -	Apr. 22	21
Summer Vacation	June 30 -	Oct. 7	98

Total days of Sessions plus Xmas and Easter Vacations - 265 days.

<u>1970 Term</u>	<u>From</u>	<u>To</u>	<u>Total Days</u>
January Session	Jan. 27 -	March 28	61
April Session	Apr. 28 -	June 29	63
October Session	Oct. 6 -	Dec. 21	77
Xmas Vacation	Dec. 22 -	Jan. 27	35
Easter Vacation	Mar. 28 -	Apr. 28	30
Summer Vacation	June 29 -	Oct. 6	98

Total days of Sessions plus Xmas and Easter Vacations - 266 days.

<u>1971 Term</u>	<u>From</u>	<u>To</u>	<u>Total Days</u>
January Session	Jan. 26 -	Apr. 5	71
April Session	Apr. 27 -	June 28	63
October Session	Oct. 5 -	Dec. 20	77
Xmas Vacation	Dec. 21 -	Jan. 26	35
Easter Vacation	Apr. 5 -	Apr. 27	22
Summer Vacation	June 28 -	Oct. 5	98

Total days of Sessions plus Xmas and Easter Vacations - 266 days.

<u>1972 Term</u>	<u>From</u>	<u>To</u>	<u>Total Days</u>
January Session	Jan. 25 -	March 30	66
April Session	Apr. 25 -	June 29	66
October Session	Oct. 3 -	Dec. 22 (?)	81
Xmas Vacation	Dec. 20 -	Jan. 25	35
Easter Vacation	Mar. 30 -	Apr. 25	25
Summer Vacation	June 29 -	Oct. 3	95

Total Days of Sessions plus Xmas and Easter Vacations - 273 days.

SUPREME COURT OF CANADA

Table 6

Motions heard by the Court in the
period 1967-1971

<u>YEAR</u>	<u>CIVIL</u>	<u>CRIMINAL</u>	<u>TOTAL</u>
1967	59	48	107
1968	53	43	96
1969	57	64	121
1970	61	66	127
1971	85	92	177

SUPREME COURT OF CANADA

Table 7

References to more detailed statistics

- (a) For the period 1950-1964, see "The Supreme Court of Canada as a Bilingual and Bicultural Institution", by Peter H. Russell, pages 115-117. (A report prepared for the Royal Commission on Bilingualism and Biculturalism, published in 1969, available from Information Canada, Ottawa.)
- (b) For the period 1961-70, see the following volumes of the Osgoode Hall Law Journal, where the Supreme Court Reports for the years respectively indicated are analysed.

Vol. 3 (p.180 et seq.) 1961, 1962, 1963

Vol. 3 (p.444 et seq.) 1964

Vol. 4 (p.276 et seq.) 1965

Vol. 5 (p. 29 et seq.) 1966

Vol. 6 (p. 87 et seq.) 1967

Vol. 7 (p.105 et seq.) 1968

Vol. 8 (p.621 et seq.) 1969

Vol.10 (p.487 et seq.) 1970

The House of Lords and the Judicial Committee
of the Privy Council

Table 8

Number of Cases Reported, 1961-71

<u>Year</u>	<u>House of Lords</u>	<u>Privy Council</u>	<u>Total</u>
1961	18	20	38
1962	16	17	33
1963	19	17	36
1964	23	16	39
1965	28	13	41
1966	13	10	23
1967	16	36	52
1968	19	15	34
1969	15	19	34
1970	29	21	50
1971	30	15	45

Note: About 70% to 75% of decisions by the House of Lords and Privy Council are reported (i.e. published in the Law Reports.).

THE SUPREME COURT OF THE UNITED STATES

Table 9

- (a) From "Report of the Study Group on the Caseload of the Supreme Court" (Chairman, Professor Paul Freund, Harvard University.) Published by The Federal Judicial Center, Washington, D.C., December 1972.

"In the past thirty-five years.....the Court has agreed to hear a remarkably constant number of cases. At most Terms it has heard oral argument in about 130 to 160 cases and written full opinions in about 120. But the number reviewed in comparison to the number filed has fallen substantially." (p.39)

NOTE: A 'Term' of the U.S. Supreme Court is the full Court year, October to June.

- (b) Number of Cases decided annually with full written opinions, as reported in the Harvard Law Review, as indicated.

1968 - 122 (83 Harv. L.R. 278)

1969 - 94 (84 Harv. L.R. 248)

1970 - 122 (85 Harv. L.R. 346)

1971 - 151 (86 Harv. L.R. 300)

APPENDIX C

PROCEDURES OF THE
SUPREME COURT OF THE UNITED STATES

(a) Operating Procedures of the Supreme Court of the United States

The Court year is called a Term. It commences on the the first Monday in October and runs to about the middle of June. The Court sits for two weeks to hear oral arguments of cases, then recesses for two weeks when research is done and opinions prepared. Occasionally the recess may be three weeks. At the end of each week of oral argument, and at the end of each two weeks' recess, on Friday, the judges meet in conference under the chairmanship of the Chief Justice. The conference is completely secret and only the judges themselves are present. The Court functions always as a plenum and not in panels or divisions. It is considered that the Constitution of the United States requires this. The judicial conference then is the principal organizational means whereby the Court functions in a plenary way as a single court.

So far as deciding upon applications for leave to appeal are concerned, these are dealt with on documents submitted only, which are circulated and later voted upon in conference, four affirmative votes being effective to grant leave (three if only seven judges are present). The percentage of leaves granted is very small indeed. There are no oral hearings. There are also other quite summary ways of disposing of some cases that reach the court otherwise than by petition for certiorari.

As for deciding the cases that have been put on the docket for hearing and decision, the conference is vital here too. Again the emphasis is on the documentation provided by a full brief of argument from each of the parties. The court usually insists upon oral argument as well, but allows each party one hour at the most, usually only 35 minutes. At the conference, the cases heard on oral argument that week are discussed. The Chief Justice assigns the writing of the opinion of the court, or the majority opinion, if he is one of the majority. If not, then the senior Associate Justice in the majority makes the assignment. Separate concurrences or dissents are allowed, but their frequency has varied a great deal. Opinions are circulated as they are drafted and may be changed at any time before public announcement of judgment. Much research and thought on the part of the Justices themselves go into the writing of opinions at this stage.

(b) Comparison with Operating Procedures of the Supreme Court of Canada

As stated in our Report, the Committee considers that instructive comparisons may be made between the Supreme Court of Canada and the Supreme Court of the United States. The working court year seems to be of about the same duration, and the out-

put of cases decided with full opinions likewise is about the same (though perhaps slightly higher in the United States). Also, the differences seem to offset one another. The Supreme Court of the United States allows very little time for oral hearings but always operates as a plenum. The Supreme Court of Canada allows full time for oral argument of cases listed for full hearing, but usually sits for this purpose in panels of five judges. Also, applications for leave are decided by panels of three judges. This is why we have concluded that the experience of the Supreme Court of the United States with consent jurisdiction since 1925 is a valid indication of what the results would be if the Supreme Court of Canada were now to be given the same sort of control of its docket. It is true that some members of the Supreme Court of the United States and some American jurists now consider their Court is overburdened again. But this refers to the processing of the applications for leave to appeal (petitions for certiorari) and not to proper attention for the cases the Court has selected for full review and decision. In this latter respect, the Supreme Court of the United States has been able to keep up-to-date with a caseload that it keeps at a constant level.

(c) Report of the Study Group on the Caseload of the Supreme Court

(Federal Judicial Center, Washington, D.C., December, 1972)

The Study Group that reported on the Supreme Court of the United States was appointed by Chief Justice Burger and the chairman was Professor Paul Freund of Harvard University Law School. They concluded that the burden of dealing with applications for leave to appeal (petitions for certiorari) had become so great that it threatened the ability of the judges to give proper attention to the cases selected for full review, their primary function. The Freund Study Group recommended that there should be a new federal court, a National Court of Appeals, which would consider the petitions for certiorari, sending only about 400 of them on to the Supreme Court of the United States. The latter would then select about 140 of these for full briefs, argument and review.

This proposal is proving highly controversial in the United States. Mr. Justice Douglas, for example, considers the Court to be fully capable of dealing with the present burden of petitions for certiorari without prejudice to its duties and functions. Others point out that the Freund Study Group would allow a would-be appellant to file a petition for certiorari simultaneously with the proposed National Court of Appeals and with the Supreme Court itself. Hence, they say, so many appellants would do this that the proposed solution is really no solution at all.

The views of Mr. Justice Douglas, published before the Freund Study Group Report, but since re-affirmed, are found in

an essay by him entitled:

"Managing the Docket of the Supreme Court of the United States."

(See: The Record of the Association of the Bar of the City of New York, Volume 25, (1970), pp 279 - 298.)

A critical essay on the Report of the Freund Study Group, by Peter Westen, may be found at pages 29 to 32 of the "New York Review" for February 22, 1973. This essay describes the issues and the current controversy.

- (d) For a general history of the Supreme Court of the United States and a description of its procedures, see:

Marble Palace: The Supreme Court in American Life
by John P. Frank, (Alfred A. Knopf, New York, 1958)

Another very helpful study is:

Appellate Courts in the United States and England
by Delmar Karlen, (New York University Press,
New York, 1963)

APPENDIX D

REFERENCES CONCERNING THE PROPOSED
'FEDERAL QUESTION' LIMITATION

- (a) Reasons against adopting a 'federal question' limitation for the jurisdiction of the Supreme Court of Canada have been given in the text of the Committee's Report.
- (1) The figure that about half of the cases in Federal trial courts in the United States are diversity cases comes from the following source:

Study of the Division of Jurisdiction between
State and Federal Courts

(As adopted and promulgated by the American Law Institute at Washington, D.C., May 18, 1965 and May 21-22, 1968.)

Appendix B, p. 465, at ps. 469-70.

Generally, this Study shows the many serious problems that arise out of the dual operation of State and Federal Court systems in the United States.

- (2) Respecting the obligation of State Courts in the United States to enforce federal laws; see pages 395-99 of:

The Federal Courts and the Federal System,

Henry M. Hart Jr. and Herbert Weschler,
(The Foundation Press, Inc., Brooklyn, 1953)

- (b) The recommendation of the Canadian Parliamentary Committee in favour of a 'federal question' limitation in Canada on the jurisdiction of the Supreme Court of Canada is at page 15 of the final report.

Final Report of the Special Joint Committee
of the Senate and of the House of Commons
on the Constitution of Canada

(Information Canada, Ottawa, 1972)

The following professors have also written in favour of this type of limitation for Canada:

Professor Albert S. Abel, "The Role of the Supreme Court in Private Law Cases", (1965)
4 Alberta Law Review, ps. 39-48.

Professor Peter H. Russell, "The Jurisdiction of the Supreme Court of Canada: Present Policies and a Programme for Reform", (1968)
6 Osgoode Hall Law Journal, ps. 1-38.

Also, by the same author, "Constitutional Reform of the Canadian Judiciary", (1969)
7 Alberta Law Review, ps. 103-129.

- (c) The text of the resolution of the Canadian Bar Association opposing the recommendation of the Special Parliamentary Committee (b) is given at page 7 of the "Canadian Bar Bulletin" for September, 1972.

The following professors have also opposed a 'federal question' limitation on the jurisdiction of the Supreme Court of Canada.

Professor Gerald E. Le Dain, "Concerning the Proposed Constitutional and Civil Law Specialization at the Supreme Court Level", (1967) 1a Revue Juridique Thémis, ps. 107-126.

Professor W.R. Lederman, "Thoughts on Reform of the Supreme Court", (1970) 8 Alberta Law Review, ps. 1-17.

ANNEX "B"

360 St. James Street
18th Floor
Montreal 126, Que.

June 19, 1973

The Honourable Otto Lang, P.C., Q.C., M.P.
Minister of Justice and Attorney General
of Canada
Ottawa, Canada

Dear Mr. Minister:

In his letter of December 8, 1971 to Mr. John L. Farris, Q.C., the then President of The Canadian Bar Association, your predecessor, The Honourable John N. Turner, made reference to the increasing number of cases which the Supreme Court of Canada is required to hear. He went on to say

"... if justice is to continue to be rendered to the satisfaction of the people of this country, some modification will probably be required to enable the Supreme Court to meet the increased work-load that it is likely to continue to face."

He invited the views of The Canadian Bar Association with respect to this problem.

In response to that request, a Special Committee of this Association was named under the chairmanship of Mr. B. J. MacKinnon, Q.C. of Toronto. That Committee has studied the problem in depth and in the course of its study has reviewed the practices and procedures of the court of final review in other comparable jurisdictions. The Committee has now submitted its report, and I have pleasure in forwarding a copy of that report under separate cover.

Later today, I propose to deliver to the Chief Justice of Canada a sufficient number of copies of the report to enable the Chief Justice to make a copy available to each member of that Court.

Yesterday, June 18th, a copy of the report was mailed to each member of the national Council of The Canadian Bar Association. It follows that Council has not yet had an opportunity of studying or discussing the report so that I am not in a position to indicate the reaction of Council to the report. However, it will be discussed at a meeting of Council to be held on Sunday, August 26th next in Vancouver.

Yours very truly,

/np

L. P. de Grandpré

ANNEX "C"

Room 320,
90 Sparks Street,
Ottawa. X1P 5B4.

September 13, 1973.

The Honourable Otto Lang, P.C., M.P.,
Minister of Justice and Attorney General
of Canada,
Ottawa, Canada.

Dear Mr. Minister:

Under cover of his letter of June 19 to you, Mr. L. P. de Grandpré submitted to you the report of a Special Committee of this Association which examined in depth the caseload of the Supreme Court of Canada. In that letter Mr. de Grandpré made it clear that the report had not been considered by the Council of The Canadian Bar Association. It was subsequently discussed at some length by Council at a meeting held in Vancouver on Sunday, August 25.

I am pleased to advise you that the Committee's report was approved by Council subject to two amendments as follows:

1. That the first subsidiary recommendation of the Committee abolishing appeals as of right should only apply to cases which have not been commenced in the lower court at the time any enabling legislation takes effect. Strong objections were taken to the Committee's recommendation which would, in effect, make the proposed legislation retroactive by applying to cases actually before the courts at the time of the legislation and the meeting did not favour this retroactive feature.
2. That the third subsidiary recommendation of the Committee be amended to read as follows, the underlined words being added:

"Judicial definition of elements of public importance or an important principle of law should govern when applications for leave to appeal are granted or refused".

We are pleased to have been of service to your Department in undertaking this study and we hope that the recommendations of the report as amended will prove useful in ameliorating the serious workload problem in the Supreme Court of Canada.

Yours very truly,

ENM:M

E. Neil McKelvey, Q.C.,
President.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 2

THURSDAY, DECEMBER 12, 1974

First Proceedings on Bill S-20, intituled:
“An Act to amend the Territorial Lands Act”

REPORT OF THE COMMITTEE

(Witness: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Walker-(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 11, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Buckwold, seconded by the Honourable Senator Giguère, for the second reading of the Bill S-20, intituled: "An Act to amend the Territorial Lands Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

December 12, 1974

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 4:20 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*) Flynn, McIlraith, Neiman, Prowse, Quart and Robichaud. (7).

In Attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to examine Bill S-20 intituled "An Act to amend the Territorial Lands Act".

Mr. A. B. Yates, Director, Northern Policy and Programme Planning Branch, Department of Indian and Northern Affairs was heard by the Committee.

On the recommendation of the Honourable Senators McIlraith and Flynn, it was agreed that the Minister of Indian and Northern Affairs should be invited to appear before the Committee in order to discuss in greater detail the scope of the Bill.

At 4:45 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard
Clerk of the Committee

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, December 12, 1974.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-20, An Act to amend the Territorial Lands Act, met this day at 4.30 p.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us Bill S-20, An Act to amend the Territorial Lands Act. Appearing before the Committee is Mr. A. B. Yates, Director, Northern Policy and Program Planning Branch, Department of Indian and Northern Affairs. Perhaps Mr. Yates could give the committee a summary of what is proposed.

Mr. A. B. Yates, Director, Northern Policy and Program Planning Branch, Department of Indian and Northern Affairs: Mr. Chairman, the purpose of the proposed amendment is to change the provisions under section 24(1) of the Territorial Lands Act, which prohibits employees of the Government of Canada from holding any shares in a corporation or a company with an interest in any Territorial lands. This amendment would exempt such employees from having to declare any such interest by authorizing an order in council exempting him or her from the penalties under the present act.

This provision has been in the act since 1923. At that time, of course, there was little in the way of this type of activity going on in the Territories. Since that time we have used the order in council provision of the act for all public servants or employees of the government acquiring territorial lands; that is to say, for a cottage lot, a house, or something of that nature, and it is still proposed under this amendment that that condition should apply. However, the provision prohibiting an employee from being a shareholder in a company or corporation with interests in territorial lands has never been acted upon. No orders in council have been passed, to my knowledge, exempting an employee who owns shares in any such company.

This came to our attention, significantly, with the passage of the Conflict of Interest Guidelines published under Order in Council P.C. 1973-4065, which requires all employees to declare any conflicts of interest. It is quite clear, under the provisions of the act, that anyone having shares in a company or corporation having an interest in territorial lands is required to declare that interest, and should such declarations be made, it would be necessary for the government to pass an enormous number of orders in council to exempt the quite innocent holdings which employees might have.

Senator Prowse: Section 24(1) says, "... purchase, acquires or holds such lands or any interest therein except by or under the authority of an order of the Governor in

Council." Does that apply to the corporation, not to the shareholders?

Mr. Yates: It applies to the individual shareholders.

Senator Prowse: The order in council would apply to the individual shareholders, not the corporation?

Mr. Yates: That is correct, a shareholder who is an officer or employee of the Government of Canada with shares in some major international company—a very small number—with interests in territorial lands. Such an individual would be required to declare that interest and then have to be exempted by an individual order in council. The proposed amendment, of course, makes provision for a general order in council which could exempt whole classes, and the government could then pass an order in council which would tie this exemption to the conflict of interest guidelines. If the individual is not in any conflict of interest under those guidelines, then he would be exempt under the Territorial Lands Act.

Senator Prowse: You say this applies just to members of the Public Service. It would not apply to a member of the Senate or a member of the House of Commons?

Mr. Yates: That is correct. It would apply to public servants and to other employees of the Government of Canada, such as crown corporation employees.

Senator Prowse: I have in mind this situation. There are a number of companies that provide services to the oil companies. These may be companies that operate drilling rigs, companies that provide services that are required by drilling rigs, people who provide transportation to the area. They buy a little lot in the town of, say, Fort Simpson, where they have an office. That gives them an interest. They may rent a piece of land or rent office space; this gives that corporation an interest in land. A person who has acquired perhaps 100 shares for peanuts would be on the book on this thing. It is so broad even now. Surely you have to be more specific than that.

Mr. Yates: That indeed is the case. It is so broad now that it is administratively impractical to operate.

Senator McIlraith: It is worse.

Senator Prowse: Do you think your amendment narrows it down to the point where it can make common sense?

Mr. Yates: I think that under subsection (2) of the amendment an order in council can be passed which, without trying to interpret it, will say that any person who is not in conflict under the public servants conflict of interest guidelines in respect of this provision here is exempted.

Senator Flynn: What are you reading from?

Mr. Yates: I was not reading. I was saying that any person who is not in conflict of interest under the public servants conflict of interest guidelines—

Senator Flynn: Guidelines which will be enacted?

Senator Prowse: Which have not been enacted yet.

Mr. Yates: They have been passed by order in council.

Senator Flynn: Under the authority of what legislation?

Mr. Yates: I am sorry, I am not sure.

Senator Flynn: That is a very important point.

Senator Prowse: I think I would like to know how broad that is.

Mr. Yates: Perhaps that was under the Public Service Act, but I do not know. It is P.C. 1973-4065, dated December 18.

Senator Flynn: Does it have a title? Is that the only title you have?

Mr. Yates: It just says they may be cited as the Public Servants Conflict of Interest Guidelines.

Senator Prowse: How do we get a copy? I think we should see that.

Senator McIlraith: I have some questions. Leaving aside the point about the order in council for the moment, have you any idea how many companies have land in the territorial lands area?

Mr. Yates: Literally hundreds—

Senator McIlraith: Literally hundreds?

Mr. Yates: —have some interest.

Senator McIlraith: How is any public servant to know that a large public company has or is likely to have an ownership interest in lands in the Northwest Territories?

Mr. Yates: Certainly the normal public servant would have no idea. There are a few cases in my own department and in the Department of Energy, Mines and Resources where indeed some employees have a very intimate knowledge of what is going on. Those individuals, of course, declare their interest, because they recognize there is a conflict, because they could take advantage of their knowledge to buy shares.

Senator McIlraith: Let me pose this question. Suppose they have declared their interest and desire to buy a piece of land there. They are public servants. In fact, they own shares in a company that owns land there and they have committed an offence. How is that person to know or to have reason to suspect that the company in which he owns shares has land in the Northwest Territories? For instance, does Loblaw's Groceries own land in the Northwest Territories when they supply some of the other food firms up there who are acting for contractors? Does Bell Telephone own land in the Northwest Territories?

Mr. Yates: They certainly do.

Senator McIlraith: How is a civil servant in the Department of the Secretary of State dealing with cultural matters in Toronto or Montreal to know that the Bell Telephone shares he holds put him in a conflict of interest

position if he buys land in a territorial lands area to go fishing?

Senator Prowse: I think it should be narrowed down a long way from where it is before it has any meaning.

Senator McIlraith: You have gone a long way from public conflict of interest in a reasonable way.

Mr. Yates: This is what the present act says. That is quite right. It is unworkable.

Senator McIlraith: So is the new one. On that point, the new one is just as bad.

Senator Neiman: Should it not all be scrapped? May I ask a very naive question? Why is this territory treated any differently from, for instance, Quebec or northern Ontario in terms of land?

Senator Prowse: Or Alberta.

Mr. Yates: Territorial lands come under the Crown of Canada.

Senator Neiman: I know, but what we are really getting at is conflict of interest, whether it is owned one way or another. I think we are really getting at mineral and mining rights. Why should these two areas be treated like colonies in some peculiar way that I cannot fathom? Maybe I am missing the point of it all.

Senator Prowse: Let us take the National Energy Board. I would think if they were to start to buy western oil stock we would be very interested in knowing it, and that is not the Northwest Territories. I think we have got to have legislation that is more specific than this. What we are doing is passing something so broad that we may be catching 95 per cent of the public servants who earn more than \$10,000 a year. There must be 95 per cent of them.

Mr. Yates: Perhaps I could make the point that there are two elements to the act and the amendment. What will be left in the act is that no officer or employee may purchase or acquire any territorial lands except under the authority of the Governor in Council. That will remain, and that seems a sound provision. The second one, which is concerned with the interest of a shareholder or otherwise, is subject to the blanket order in council provision of the proposed subsection (2). The order in council when promulgated will bring it back to the conflict of interest guidelines, so that as far as the public servant is concerned he only needs to concern himself with the conflict of interest guidelines, which have been widely promulgated, and he will be exempted from dismissal.

Senator Flynn: I do not think so. Suppose your guidelines are enacted under proper authority. This point could be covered in the guidelines probably better than here. The point raised by Senator Neiman is a valid one. To this we attach the problem of the offshore rights of the federal government in British Columbia. I do not want to go into that; Senator Greene is not here. Let us say you had an overall set of guidelines or legislation for conflict of interest of public servants, do you not think it would be much better than having this little thing hidden in this act, and applicable only to the Yukon and the Northwest Territories?

Senator McIlraith: But to all civil servants.

Senator Flynn: If the guidelines were enacted under proper authority, that would be the place, not here. The

idea occurred to me when discussing this matter with Senator McIlraith yesterday, that what you should have proposed to us is the abrogation of section 24 altogether and its replacement by the guidelines that you are speaking of applicable to all employees and all sorts of conflict of interest. Mr. Chairman, I have to be fair to the witness. I think this is a problem of policy and we should not ask him to comment upon it.

The Chairman: That is right.

Senator McIlraith: I would like to question the minister on the point raised by Senator Flynn. I think that is the key of our difficulty with this proposed clause. The shareholder interest would, it is hoped, be covered by a general blanket Order in Council.

Senator Robichaud: I am a little intrigued with the fact that this simply covers public servants. That again leads to another question. Why would public servants—who are not policy makers who draft the legislation and all that—be placed in a different category than members of the House of Commons and members of the Senate as far as exemptions are concerned?

Mr. Yates: I think that the best way I can answer that in this context is that the reason for this amendment came about as a result of the conflict of interest guidelines being brought to the attention of people in our department. At that time they saw this anomaly in the act as it is now written and they moved to have the act amended, without perhaps interfering with all these others.

Senator Robichaud: Is it that members of the House of Commons and of the Senate are all caught up in some other way?

Mr. Yates: In some other legislation, I would imagine.

Senator Robichaud: Why is there a distinction made between the Northwest Territories and the Yukon and other parts of Canada, as Senator Flynn has mentioned? Where is the difference?

Mr. Yates: These lands come under the jurisdiction of the federal government.

Senator Robichaud: You said Crown property.

The Chairman: The federal Crown.

Mr. Yates: The federal Crown. I beg your pardon. I should have made that clear, that they are all federal Crown lands we are concerned with.

Senator Flynn: Not all. You have the Yukon and the Northwest Territories, but that does not extend to federal Crown lands outside that and there are some, as I mentioned—the offshore. These are not covered.

Mr. Yates: It extends to the Yukon and Northwest Territories.

Senator Flynn: But not the federally owned lands elsewhere.

Senator Robichaud: I think then, of what my former colleagues used to call the Continental Shelf, which extended for miles and miles outside the actual territorial limits. Why are the Yukon and the Northwest Territories isolated from the rest of these cases, which could emerge at any moment, as it happens?

The Chairman: May I point this out. The Territorial Lands Act itself is an act respecting Crown lands in the Yukon Territory and the Northwest Territories exclusively. The words "territorial lands" are defined to mean "lands in the Northwest Territories or in the Yukon Territory that are vested in the Crown or of which the Government of Canada has power to dispose."

Senator Flynn: But the question is relevant, just the same.

The Chairman: It is a matter of dealing with a piece of legislation which is restrictive or introducing new legislation which will cover everything.

Senator Neiman: That is right. And we suggest that might be the better way.

The Chairman: That is a matter of policy.

Senator McIlraith: It seems to me that we are getting into a discussion of points here that are really matters of policy and we ought properly to ask the minister to come. I am wondering, in the light of that, if it is of any use pursuing the points of policy with this witness. If other senators agree, I would suggest that we adjourn and call a meeting at the convenience of yourself, Mr. Chairman, and the minister.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: Then I will see to it that a meeting is called, when it is convenient to the minister. Unfortunately, I will be absent for two or three days next week. Senator Laird, the deputy chairman, is prepared to preside and he said he would be here on Tuesday morning at 10 o'clock.

Senator Flynn: Might I point out that it is quite obvious that this bill is not urgent at all and it will not pass the other place next week.

The Chairman: I do not think so.

Senator Flynn: So whether we have this committee meet next week or not, it is not necessary. I would rather have the minister consult and see whether he would not find another solution.

The Chairman: Shall we adjourn to the call of the chair, and I will deal with that matter?

Hon. Senators: Agreed.

The Committee adjourned.

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6.30

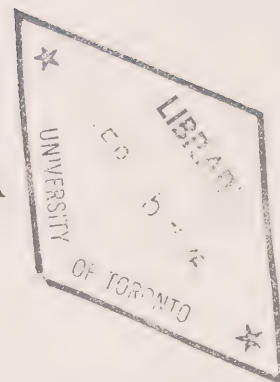


FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS



The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 3

THURSDAY, DECEMBER 19, 1974

Complete Proceedings on Bill C-36, intituled:

“An Act to provide for representation in the House of Commons, to establish electoral boundaries commissions and to remove the temporary suspension of the Electoral Readjustment Act”

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Walker—(20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 18, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Perrault, P.C., seconded by the Honourable Senator Langlois, for the second reading of the Bill C-36, intituled: "An Act to provide for representation in the House of Commons, to establish electoral boundaries commissions and to remove the temporary suspension of the Electoral Boundaries Readjustment Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Perrault, P.C., moved, seconded by the Honourable Senator Langlois, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

December 19, 1974

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:30 a.m.

Present: The Honourable Senators Laird (*Deputy Chairman*) Asselin, Fergusson, Godfrey, McIlraith, Neiman and Prowse.

Present but not of the Committee: The Honourable Senators Deschatelets and Lafond.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the examination of Bill C-36 intituled "An Act to provide for representation in the House of Commons, to establish electoral boundaries commissions and to remove the temporary suspension of the Electoral Boundaries Readjustment Act".

Mr. John Reid, Parliamentary Secretary to the President of the Privy Council, was heard in explanation of the Bill.

On motion of the Honourable Senator Asselin, it was *Resolved* to report the said Bill without amendment.

At 11:00 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Thursday, December 19, 1974.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-36, intituled: "An Act to provide for representation in the House of Commons, to establish electoral boundaries commissions and to remove the temporary suspension of the Electoral Boundaries Readjustment Act" has, in obedience to the order of reference of Wednesday, December 18, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Keith Laird,
Deputy Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, December 19, 1974.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-36, an Act to provide for representation in the House of Commons, to establish electoral boundaries commissions and to remove the temporary suspension of the Electoral Boundaries Readjustment Act, met this day at 10.30 a.m. to give consideration to the bill.

Senator Keith Laird (*Deputy Chairman*) in the Chair.

The Deputy Chairman: I see a quorum, so we shall commence our consideration—

Senator Deschatelets: Mr. Chairman, in your opening remarks will you please inform us of the manner in which you intend to proceed? Usually we would start with the first clause and proceed through the bill. I would ask you to consider, especially in this circumstance, if it would be a good idea for us to receive an explanatory statement before we consider the first clause.

The Deputy Chairman: Yes, I agree with you, Senator Deschatelets. I was simply intending to say that we have had referred to us a bill, which in its short title is described as the Representation Act, 1974.

We have two witnesses in attendance: Mr. John Reid, M.P., Parliamentary Secretary to the President of the Privy Council, and Mr. John Tait, of the Legislation and House Planning Secretariat, Privy Council Office. They are prepared, of course, to answer questions, but it does seem to me, as Senator Deschatelets has suggested, Mr. Reid, that, if you are prepared to, you could commence by explaining the philosophy underlying the method used to arrive at this particular distribution of seats. Perhaps one more word. You may think this is primarily the concern of the House of Commons, but certain senators here now have expressed certain reservations. That is why we are glad you could come over and assist us in better understanding the legislation before we proceed further with the bill.

Senator Deschatelets: Before you proceed, there is no doubt that we have departed in this legislation from the usual formula for distribution. I must tell you that as far as I am concerned I have expressed certain reservations, but I have an open mind. However, I would like to be satisfied by having you inform us of the philosophy, what is behind this bill and what is the reason for changing the formula which resulted in the legislation before us.

Mr. John Reid, M.P., Parliamentary Secretary to the President of the Privy Council: Yes, senator. Mr. Chairman, I wish to express the regrets of Mr. Sharp that he could not be here this morning, as he must attend an important cabinet meeting. He asked me to express his regrets and the hope that the next time such legislation is

under consideration he will be able to participate personally.

With regard to the philosophy underlying the bill, first of all I should say, Mr. Chairman, that in all Canadian history there has never been a method of redistribution which has lasted more than two redistributions. The reason for that is the nature, location and demographics of the Canadian population. As you are aware, when the last maps were brought down in the previous Parliament there was great dissatisfaction on the part of members of Parliament of all parties with the results. The consequence of that was the passing of the Electoral Boundaries Readjustment Suspension Act, which put an 18-month hoist on the redistribution process. That gave members 18 months in which to produce an alternative system.

The President of the Privy Council came forward with a number of systems and a private member of the House of Commons, Dr. Ritchie, put forward another. The Standing Committee on Privileges and Elections considered these and made a choice which is known as the amalgam method, which is basically what you have before you in the form of the bill. What became known as the Ritchie proposals would have amounted to the addition of six seats to the House of Commons—three to the province of Ontario, three to the province of British Columbia, with all the remaining provinces having their seat totals unchanged.

As you know, with the growth of population taking place in, basically, Ontario, British Columbia and Alberta, and the smaller provinces remaining rather constant in terms of population, we were faced under the old system with a situation whereby the provinces of Manitoba, Saskatchewan, Nova Scotia and Newfoundland each would lose a seat.

Senator Deschatelets: Quebec would also lose a seat.

Mr. Reid: The province of Quebec also would have lost a seat. The result of transferring these seats had two undesirable effects, the first being that it became very difficult for the less populated provinces to cope with the loss of representation, because the feeling is that they should have a certain proportion of the representation in the House of Commons, in spite of their smaller population. A classic example of this, of course, is Prince Edward Island, with four seats, because P.E.I. now has the same number of M.P.s as it has senators. It also meant that the number of seats available to be redistributed to the other provinces was not really in keeping with the growth shown by those provinces. This would cause the political map of Canada to have become even more distorted. That would have another undesirable effect, because in the provinces of Ontario, Quebec and British Columbia, particularly, the tendency would be to concentrate the representation within their urban centres. In the case of Quebec it would be Montreal; in the case of Ontario it would be Toronto; and in the case of British Columbia it would be the lower

mainland around Vancouver. It was therefore considered desirable, under those circumstances and because any principle of representation by population was getting out of bounds, that a new system should be developed. The system which the government and most members of the Opposition have accepted is the amalgam method.

The philosophy is to establish three tiers of provinces: those which are at, or near their floors, in which category we can classify all the Maritime provinces and the provinces of Manitoba and Saskatchewan. These are the provinces with a population, individually, of under one million each. We then considered the distribution of population which would add a second group of provinces, with a population above one million but less than that of the two largest provinces, which are, of course, Ontario and Quebec. We classified an intermediate group, of Alberta and British Columbia, having a population of between 1,500,000 and 2,500,000. The third tier, of course, consists of the larger provinces, Ontario and Quebec.

So, in attempting to establish the formula, we endeavoured to set it up so that the smaller provinces would be properly represented in the House of Commons, in greater proportion than their population would otherwise permit. We then gave the intermediate provinces a sufficient representation that their average constituency size would be about equal to the means for Canada. The two larger provinces probably have less than their proportionate share of the representation, the difference going to the Maritime provinces. The largest constituency sizes will be found, therefore in the provinces of Ontario and Quebec.

We have included some provision for protection, because the formula calls for an automatic increase of four seats for the province of Quebec in the next redistribution. This is to be the bellwether and we are going back in this case to a formula which existed years ago. Quebec, therefore, would be the bellwether in instituting the constituency size for the other larger province, Ontario.

That completes my explanation of the philosophy underlying this bill. It attempts to take into account traditional patterns of representation in the House of Commons and to cope with the dilemmas we face as the population of Canada tends to concentrate in fewer centres than had previously been the pattern.

Senator Deschatelets: Were other possible solutions or formulae investigated in addition to this amalgam formula?

Mr. Reid: Yes, there was a total of six proposals, five presented by the minister and one by Dr. Ritchie. In the course of the debate in the Standing Committee on Privileges and Elections in the other place the honourable member for Calgary Centre presented another version, but it was by that time too late to be considered.

Senator Deschatelets: Did the amalgam formula meet with the consensus, majority opinion, or was it a unanimous choice of the members?

Mr. Reid: I might say, senator, that I do not believe any formula for redistribution would meet with the unanimous consent of members of Parliament, just as there is no formula which would be acceptable to them on a mass basis for the distribution of seats within a province.

Senator Deschatelets: But for the majority?

Mr. Reid: For the majority, yes. I must say that during the committee proceedings it was pointed out to us that the formula we presented, the amalgam formula, contained a deficiency, in that it provided some advantages for the provinces classified as intermediate and small. There was a rationale in the relationship between those two, but there was no differentiation between the large provinces and the intermediate provinces. In point of fact, the intermediate provinces were penalized under the amalgam method; they ended up with a larger constituency population than did the provinces of Quebec and Ontario.

So in the committee hearings a small amendment was made which had the effect of adding an extra seat to British Columbia and Alberta which brought their average constituency size down to below that of Ontario and Quebec; and actually it worked out to the mean of the Canadian population.

Senator Godfrey: I gather that it is Ontario and Quebec which got less per population. How many seats less?

Mr. Reid: The rough figures are that the province of Quebec, with a population of 27½ per cent of the Canadian population, will get about 26¼ per cent of the seats in the House of Commons. These are rough figures. Ontario, with a population of about 36 per cent of the population of Canada, will get about 34 per cent of the seats.

Senator Asselin: We were told that Ontario would have 110 seats in 1981. Can you explain that?

Mr. Reid: Yes. With the formula that we have adopted, the amalgam method, the government felt it necessary to project it into at least the next decennial census, which will take place in 1981. However, members of Parliament felt quite strongly that the House of Commons ought not to expand too far; and so, at their urging, we included in this bill a new clause which provides for the House of Commons to strike a committee in 1979 to look into the impact of the amalgam formula and for them, if necessary, to recommend a new one, should they choose.

Senator Asselin: So it is a permanent formula, but it will be reviewed?

Mr. Reid: That is correct. There is a statutory requirement in the bill which requires that. You will find it on page 7 of the bill. New clause 7 requires the President of the Privy Council to bring forward a motion in the middle of 1979 to refer to the Standing Committee on Privileges and Elections all of the rules affecting the redistribution of parliamentary seats as among provinces in Canada.

Senator Asselin: We were told that if this formula had not applied, Quebec would have lost a seat. Is that true?

Mr. Reid: That is correct.

Senator Asselin: How many seats would Ontario have lost?

Mr. Reid: Three seats.

Senator Prowse: I am from Alberta, and I do not imagine there was anyone from Alberta on your committee.

Mr. Reid: Senator, we had *very* active representation from Alberta—and British Columbia.

Senator Prowse: Then that was a mistake on my part. However, I feel that if the representation from Alberta were pleased with this, had the representation been better,

it would have been different; they would have been more pleased with it. Was that representation reasonably well pleased with this amalgam formula?

Mr. Reid: I think, senator, that if you were to check the *Debates of the House of Commons* on third and final reading, you would find that the member for Calgary Centre waxed eloquent about the improvement to the formula. The members from British Columbia were also happy.

Senator Lafond: The parliamentary secretary referred to the dissatisfaction which led to the adoption of the suspension bill. I cannot refrain from believing that the dissatisfaction was probably far more with the application of the formula than with the formula itself. The device of bringing in the new formula kills the application of the old formula. I suggest that we have very little assurance that the dissatisfaction with the application of the new formula will not be as considerable as was the case two years ago. Can we get reasonable assurance that 18 months from now we will not have another bill to suspend the application?

Mr. Reid: Senator, you ask a very practical and political question. I feel that the application of this formula, which deals with the redistribution of seats as among provinces, is generally acceptable to members of the House of Commons. I suspect that a great deal of the dissatisfaction that we shall have in 18 months, when the maps are drawn, will be with the application of the rules within the Electoral Boundaries Readjustment Act, which deals with the readjustment of seats within provinces.

I do not think I am letting any tales out of school when I say there have been discussions among the House leaders to consider referring to the Standing Committee on Privileges and Elections all of the private members' bills dealing with the Electoral Boundaries Readjustment Act.

As honourable senators know, the formula will go into effect on January 1, 1975. It takes about two months for the commissions to be established. That means that if the Committee on Privileges and Elections had this reference and were to get to work immediately, they could bring forward a bill to clean up what members see as anomalies in the Electoral Boundaries Readjustment Act.

To carry that point a little further, senator, the act laying down the criteria for redistribution says that all of the historical boundaries, all of the cultural regions, and so on, should be considered as units and, where possible, be left intact; and to allow for that, there is a provision for 25 per cent leeway in the constituency size of the mean for the province.

That same clause also contains the provision that the commissioners must take into account the rate of growth of the population. So, in effect, the clause is a nullity, because the commissioners have been forced to interpret it as cancelling each other out.

We have to take a look at those sections if we are going to meet some of the demands that members have. There is also a tremendous conflict between those members who represent urban constituencies and those who, like myself, represent very large rural constituencies. I resent, for example, the suggestion that my constituency, which is one of the largest in Canada, should be expanded to triple its size, as was proposed under the last readjustment.

Senator Prowse: This is a problem.

Mr. Reid: I admit Senator Lafond's point, but I do not think we shall have problems with this bill.

Senator Prowse: A supplementary, Mr. Chairman. Will any province lose seats under this formula, Mr. Reid?

Mr. Reid: No, senator. One of the principles we began with was that no province would lose seats.

Senator Asselin: Mr. Reid, I had the opportunity myself of being the member for a fairly large district. Under this formula, what is the average size of electoral district in terms of population?

Mr. Reid: There are varying averages, senator. Perhaps I can give them to you on an approximate basis. The average for the large provinces, Ontario and Quebec, will be approximately 81,000; the average for the intermediate provinces will be approximately 78,500; and the average for the Maritime provinces, as well as Manitoba and Saskatchewan, those being the smaller provinces with a population under one million, will be a shade over 66,000.

The Deputy Chairman: Does that answer your question, Senator Asselin?

Senator Asselin: Yes, Mr. Chairman.

Senator McIlraith: Mr. Reid, do you have conveniently available a table showing the percentages in terms of population by province, and the percentage of members who will represent those provinces when this legislation becomes operative?

Mr. Reid: I can provide you with a partial interpretation, Senator McIlraith. I will just run down the population as of the last decennial census for each province. Newfoundland has 2.42 per cent of the Canadian population; Prince Edward Island had 0.52 per cent; Nova Scotia has 3.66 per cent; New Brunswick has 2.94 per cent; Quebec had 27.95 per cent; Ontario had 35.71 per cent; Manitoba had 4.58 per cent; Saskatchewan had 4.29 per cent; Alberta had 7.55 per cent; and British Columbia had 10.13 per cent.

Senator McIlraith: Can you give me the percentages in terms of representation?

Mr. Reid: The breakdown I have, senator, is not entirely satisfactory, as it gives the percentages in groupings only. The groupings are as follows: the Atlantic provinces—Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island—with 12 per cent, will have 32 seats; the Prairies—Manitoba, Saskatchewan and Alberta—with 17 per cent, will have 49 seats. The figure given in this table is 48 seats, but since these figures were made available, Alberta has been given an additional seat.

Senator Asselin: So the Prairie provinces will have 49 seats in total?

Mr. Reid: Yes, senator. British Columbia will have approximately 10 per cent of the seats, or 28 seats; Quebec will have 75 seats, being approximately 27 per cent of the seats; Ontario will have 95 seats, being approximately 34 per cent of the seats.

Those figures will not jibe, because since they were arrived at two things have happened: first, British Columbia has received, I believe, two additional seats, and Alberta has received one additional seat. In addition, the government has made a commitment that there will be a second seat in the Northwest Territories. Those figures represent the approximate breakdown. The population figures are exact.

Senator Prowse: When you throw the Northwest Territories and the province of Prince Edward Island into this kind of general picture, the figures become somewhat gummed up.

Mr. Reid: That is right. We have included the province of Prince Edward Island in the compilations, but have excluded the Yukon and Northwest Territories.

Senator Prowse: If you are going to balance it, I think you have to leave out the province of Prince Edward Island as a special case, too, because it just completely gums up your figures.

Mr. Reid: Well, we have been generous and included it.

The Deputy Chairman: If there are no other questions or comments, I would ask for a motion that we adopt the bill without amendment.

Senator Asselin: I so move, Mr. Chairman.

The Deputy Chairman: Is it agreed that I report the bill without amendment?

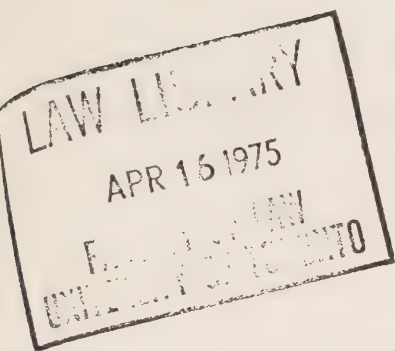
Hon. Senators: Agreed.

The Deputy Chairman: Thank you, gentlemen, for your attendance.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 4

TUESDAY, FEBRUARY 4, 1975

First Proceedings on Bill S-19, intituled:

“An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code”

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Langlois
Buckwold	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Sullivan
Lang	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate

Minutes of Proceedings

February 4, 1975.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:00 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Buckwold, Fergusson, Godfrey, Hastings, Laird, Langlois, McGrand, McIlraith, Neiman, Prowse, Quart, Sullivan and Robichaud. (15)

Present but not of the Committee: The Honourable Senators Basha, Forsey, Lapointe, Norrie, Petten, Rowe, van Roggen and Yuzyk. (8)

In attendance: Mr. E. Russel Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the examination of Bill S-19 intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

The following witnesses, representing Health and Welfare Canada, were heard in explanation of the Bill:

The Honourable Marc Lalonde, Minister;

Dr. A. B. Morrison, Assistant Deputy Minister, Health Protection Branch.

On Motion of the Honourable Senator Asselin it was Resolved to print the statistical documents produced by Dr. Morrison. They are printed as an Appendix to this day's proceedings.

At 3:45 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, February 4, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 2.00 p.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: The bill before the committee today is Bill S-19, an Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code.

The Honourable Marc Lalonde, Minister of National Health and Welfare, has agreed to appear before us at the outset of our hearings to make a general statement. I have to explain that Mr. Lalonde's time today is limited. He will be here for 20 minutes or so, to make a general statement and be prepared to answer some questions. He has undertaken to return to the committee toward the end of our hearings to clarify any matters that might require clarification.

Mr. Lalonde will be followed by Dr. Morrison, the Assistant Deputy Minister of the Health Protection Branch and Mr. Reid McKim of the Department of National Health and Welfare.

[*Translation*]

The Honourable Marc Lalonde, Minister of Health and Welfare: Mr. Chairman, Honourable Senators, I wish first of all to thank you for your invitation to speak to you as first witness on your study of Bill S-19 on cannabis.

[*Text*]

I have read with great interest the speeches made in the Senate during the course of the debate on second reading and I look forward to the hearings you will be holding on this particular piece of legislation over the next few weeks.

As the Chairman, Senator Goldenberg, indicated, I will be very pleased to appear before you toward the latter part of your hearings after you have heard various witnesses, in order to advise you of the government's reaction to the various comments that will have been made before you in this committee.

Having read the speeches and public comments since the bill was introduced on first reading, it seems to me that initial reaction indicates that there is a need to emphasize, as did Senator Neiman in her remarks on second reading, that this bill does not legalize the possession or use of cannabis sativa, more commonly known as marihuana, or its several derivatives, hashish or tetrahydrocannabinol. I wish to make this point quite clear once more. This bill does not legalize the possession or use of cannabis in any way. The intent of this legislation is to provide Canadian

courts with needed flexibility in dealing with offences involving cannabis, so that the penalties levied will be suited to the circumstances and significance of the offences. At the same time, this bill would bring legislation into line with the sentences that the courts have already been imposing for cannabis offences.

My impressions of the reaction to Bill S-19 indicate two major areas of concern on the part of those senators who contributed to the debate on second reading, editorialists and commentators of the media, in addition to individual citizens who have written to my department.

These concerns are the health considerations surrounding the use of marihuana and the legal implications of this bill. The Le Dain cannabis report in 1972 raised questions about the possible physical and mental effects of long-term heavy use of the substance. More recent research has certainly not removed the cause for concern.

Senator Neiman, as the sponsor of this bill, dealt with specific health concerns, which I need not repeat now, except to say that they show why the government still perceives a necessity for legal sanctions against this substance in order to restrict availability and discourage use.

I would, however, like to take this opportunity to say that I have been somewhat concerned by the emotionally charged rhetoric on the subject of heroin that has been occasioned by this bill. In no way do I wish to belittle the seriousness of the use of narcotics or the dimensions of the problem. Bill S-19, however, refers only to cannabis and not to heroin or any other narcotic. I fear that sensational predictions and questionable statistics not only obscure, but probably injure the serious and intensive efforts that are already being made to come to grips with the problems caused by narcotics, particularly in British Columbia. They also obscure and confuse the realities to which Bill S-19 addresses itself, realities which have to do only with cannabis.

The introduction of Bill S-19 has aroused a great deal of interest in cannabis research. As you well know, honourable senators, hundreds of scientific studies have been carried out with respect to cannabis. In total, and especially to the non-expert, these studies are confusing, contradictory, indecisive and provide little clear assistance in making either legislative or personal decisions.

Proponents of the school of belief that cannabis is harmless will quote, or perhaps misquote, research to prove to themselves the rightness of their claim. Opponents of cannabis are just as able to produce research which proves the opposite.

I make this point to suggest there could be a real danger of repeating the time-consuming, expensive and ultimately non-definitive studies of the Commission of Inquiry into the Non-Medical Use of Drugs if the main focus of this committee's efforts is upon the pros and cons of scientific

research. I do not intend to be critical of the Le Dain commissioners when I point out that their recommendations were not unanimous. I say only that the exhaustive and thorough quest they conducted indicates that this committee, the Senate, or the House of Commons when this bill reaches it, should not attempt to depend on science for definitive answers. Science does not have such answers, nor should it be blamed for not having them at the present time. Research will continue into effects the substance may have on physical and mental health, and will likely do so for some years, but in the meantime there is a need to amend the law.

Regarding the legal implications of this bill, I do not think it is necessary to repeat all of the provisions relating to penalties contained in Bill S-19, because I am sure they were studied carefully by members of this committee when the bill was being debated on second reading. I beg your indulgence, however, to repeat certain points made by Senator Neiman.

Basically, this bill removes cannabis sativa from the Narcotics Control Act because the substance is not, in terms of pharmacology, a narcotic. Bill S-19 places marihuana and its derivatives in a new section of the Food and Drugs Act, which controls other psychoactive substances such as LSD and MDA. The Food and Drugs Act has behind it the full force of the law in controlling the availability and possession of such substances.

In cases of simple possession, this bill reduces the maximum fine a court may impose, and it also reduces the maximum jail term. A jail term is only to be served for failure to pay the fine. Most important is the provision which removes procedure by indictment and allows only for summary conviction proceedings which, as Senator Neiman explained on second reading of this bill, carry less severe implications and can be handled without undue delay.

Information already made available to you shows that in 1973, Canadian courts registered 18,603 convictions for simple possession offences. There were no jail terms imposed in 17,733—more than 95 per cent—of these cases. Statistics indicate also that for all other cannabis offences the sentences imposed in 1973 were well below the maximum penalties permitted. That is why I say that Bill S-19 provides flexibility to the courts and brings the law in line with what the courts have been doing.

Present law has been criticized also with respect to penalties for other cannabis offences — notably trafficking, possession for the purpose of trafficking, import and export, and cultivation.

[Translation]

Before Bill S-19 was introduced many people felt that sentences of up to life imprisonment for possession of cannabis for trafficking were excessive, but there is no alternative but to charge such offenders. But since the introduction of Bill S-19 I have heard in Parliament, as well as among the population, declarations to the effect that the proposed penalties are not strict enough. As you know, the Bill provides for the utilization of summary convictions providing fines of up to \$1,000, a maximum sentence of 18 months or both. In cases of sentencing under indictment the maximum jail sentence can be 10 years.

Those who thought that the laws were too strict based their opinion on their perception of the relative cost to society for the use of cannabis. According to them, various

drugs such as hero'ine, called for a different treatment. Now that Bill S-19 exists I have heard some people state that hero'ine traffickers should be hanged and therefore the Bill is too lenient for marihuana traffickers. Such declarations to me are confusing, imprecise and inappropriate. There is no solid proof that the use of marihuana automatically leads to hero'ine. Consequently any comparison of these two drugs is not in the spirit of this bill.

The government has not given up its intention of maintaining strict penalties for trafficking and possession for the purpose of trafficking in marihuana. One could discuss the degree of severity of penalties but it is preferable to weigh each case and not proceed according to our own ideas on other drugs.

From what I have observed, reactions to Bill S-19 relate to fields which come under the jurisdiction of other departments. They will have to study it in detail and I am confident that the officials of the other departments will be able to cope with the legislation. Honourable Senators, in conclusion, I would like to point out that the present laws have not stopped the experimental or other use of marihuana in Canada or, for that matter, in North America and Europe. I believe that this bill will produce a deterrent effect on those Canadians who respect the law because it is the law. I believe this is the case with the majority of citizens. I am of the opinion, honourable senators, that this bill will rationalize the part of the law which applies to those found in possession of this drug. However, this bill provides for severe penalties for those who are involved in trafficking, cultivating, importing this drug or who act as intermediaries for its distribution. This bill will place at the disposition of the courts a more flexible instrument for dealing with offenses related to cannabis and, at the same time will result in the application of the law conforming with actual practice of imposition of penalties for offences. The Cabinet and its advisers have prepared this bill which will help in solving legal and social problems relating to the use of cannabis.

Any improvement that your Committee wishes to present on this legislation will undoubtedly be favorably received by the Canadian population, and it will certainly be considered with much attention and understanding by the government.

I thank you once again to have permitted me to present the views of the government on this important bill. I am convinced that your committee will study this legislation carefully and that your discussions will contribute to a better understanding by the public of the purpose and spirit of the bill. I hope also that the bill will be forwarded to the House of Commons when you see fit which, I hope, will not be too long.

[Text]

In conclusion, I would say that my officials will be at your complete disposal for as long and as often as you wish in your study of this bill. I will be followed today by Dr. Alex Morrison, the Assistant Deputy Minister of the Health Protection Branch, which has had extensive experience in dealing with drugs. He will be in a position to comment to you on both the scientific status of the matter and also on the whole question of the implementation problems that we are facing in the area of cannabis in particular.

I am at your disposal, as I said, for a few questions today, although I would submit, Mr. Chairman, that perhaps I

will be able to bring a better contribution once you have heard from the other witnesses and once I have had the opportunity of reading their testimony and appreciating their contributions.

I might make a note, Mr. Chairman, to the effect that when your committee starts looking into the bill clause by clause, the government may have one or two technical amendments which it would like to propose to the committee. I shall not bother the committee with the details at this stage—they are more of a technical nature—but I will make sure that your committee is well acquainted with those technical amendments which the government would like the committee to consider. They are more of a marginal nature and I do not think I should take up the time of the committee today to go into those details.

[Translation]

The Chairman: I thank you, Mr. Minister, on behalf of the members of the committee.

You said you were willing to answer a few questions. So, I'm leaving this up to the committee.

[Text]

The minister will answer some questions, but I hope honourable senators will bear in mind that he is coming back and that he is expected in the House of Commons shortly.

Senator Laird: Mr. Minister, you put your finger on the biggest problem that I can foresee in our study—namely, that we are going to be bombarded with evidence about the health results of the use of marihuana. I would like to ask you a two-pronged question, from your study. Do you agree that we can hardly arrive at any definitive conclusions unless there is a period of experimentation which may extend over half a century?

Hon. Mr. Lalonde: You said your question was two-pronged. I am waiting for the other prong—or do you wish me to answer this one first?

Senator Prowse: It is a long prong.

Senator Laird: The second prong is this: from your study, do you feel that there is enough evidence to warrant our arriving at a preliminary conclusion that at least marihuana is not helpful to health and is likely to be harmful?

Hon. Mr. Lalonde: On the first part of your question, I would not be presumptuous enough to say 50 years, 25 years or even 20 years, because in scientific research someone may arrive at clear conclusions much faster than we think. The only thing I will say is that, on the basis of the research that has been carried out to date it is conflicting in its conclusions and we have every reason to believe that it will remain so for quite a while. For how long, it would be hard to assess. It is a matter still of acute debate in the community.

In reply to the second part of your question, the least we can say at present is that from the evidence we have it is likely that cannabis is harmful to health. It is not free from being dangerous—let us put it that way.

[Translation]

Senator Asselin: Mr. Minister, to begin with I have two questions, two points of view that I want to raise. It has

been said that this bill, which is being introduced by the government, is a *avant-garde* bill, and that few governments in the world have wanted to take their chances in this field. Obviously, I had reservations when I spoke in the Senate. I still have reservations concerning this bill which I believe to be too punitive rather than considering rehabilitation and, most of all, I think we don't go deep enough in the question of rehabilitation of people who make use of cannabis.

What bothers me enormously is that in this bill we have presently thousands and thousands of Canadians who, because of temporary possession—not trafficking—but temporary possession, have criminal records which often, and this has been so for years, prevent them from entering certain profession; this happens particularly in Quebec. Would it not be possible, in your bill, to grant amnesty to those people who have the letter of a criminal record for temporary possession? I know that the National Parole Board have a Branch whereby, after five years, a criminal record can be wiped out. As a lawyer I have been trying for two years, without success, to iron out the case of a client for a minor offense committed ten years ago. Do you not think, in your opinion, that the bill can, by its punitive aspect, at the present time prevent a criminal record from being labelled on a person? Of course the bill should have a punitive aspect. But, the point I raised is my main concern at the present time.

Honourable Mr. Lalonde: First of all, Senator Asselin, regarding rehabilitation, you will understand that it is not the kind of thing that enters into a legislation document such as this bill. The rehabilitative aspect is part of the department's various programmes, for example, by its use of funds granted under the programme of the non-medical use of drugs. We also subsidize a certain number of organizations working in the field of drugs, including cannabis.

The question of rehabilitation is not mentioned specifically in this bill simply because it is financed by programmes which already exist and for which Parliament votes certain sums each year.

Concerning the criminal record that you refer to, you are aware of the present legislative provisions and by the amendments introduced in the Criminal Code on pardons of criminal offenses and the manner in which criminal records can be wiped out.

The government's position is that there should not be a particular situation for granting pardons on cases involving cannabis offenses. We expect, under the present law, to be able to proceed either by summary conviction or indictment...

Senator Asselin: But that does not change the record.

Honourable Mr. Lalonde: However, it is much simpler to obtain a pardon if the offense has been dealt with by summary conviction. As you know, the bill provides that, in the case of simple possession, the Crown will proceed by summary conviction.

Senator Asselin: That will depend on the Crown prosecutor. Who will decide?

Honourable Mr. Lalonde: For simple possession, the Crown prosecutor has no choice. We intend to permit only to proceed by summary conviction. There is no indictment for simple possession, under section 48 of the bill, honourable senator.

So, for offenses already committed, the possibility of getting a pardon will be much easier and more expedient than before. Concerning those who have already been condemned for previous offenses, we cannot make a retroactive law, we do not want to make a retroactive law, but the Solicitor General has declared that the National Parole Board is undertaking to revise all the records of those presently in prison. We are also going to review the records of those who will ask for a pardon in the light of the legislation that Parliament will adopt. But we'll have to see what kind of law Parliament will produce eventually after study of the bill by the Senate and the House of Commons.

Therefore the criminal record will continue to exist. I'm in agreement with you on that. I believe that, as far as the government is concerned, we are of the opinion that we must apply, on this issue, the general provisions of the Criminal Code concerning criminal records and that there should not be any special provision for cannabis. If we start on this route we will soon have as many provisions for pardons as there are offenses, but we do not believe that this is the wisest road to follow.

Senator Asselin: Can I ask a second question, Mr. Chairman?

The Chairman: Very well.

Senator Asselin: Another provision of the bill which bothers me, and which I have raised in the Senate—Senator Hicks has also raised the issue in the Senate—is the case of a person caught in temporary possession; that person must prove that he did not have the stuff for the purpose of trafficking.

I believe, again, that in another law already adopted by Parliament, there is a reversal of the whole penal system in that a person appearing before a Court must be presumed to be innocent and the Crown must prove his guilt. But in the present bill if someone is found in possession he has to defend himself and prove that it was only for his personal use and not for trafficking. He's the one that must bring forth proof, whereas, in the Criminal Code it's the Crown that must bring up the proof. The whole aspect of the penal code is being changed if we ask a person to defend himself from accusations by the Crown by endeavouring to prove his innocence. So now we are completely reversing the penal system.

Senator Langlois: There is article 52.

Honourable Mr. Lalonde: Mister Senator, I would say that the purpose of article 52 is not to reverse the burden of proof, and that its effect is not to circumvent the general provisions of the Criminal Code with respect to the burden of proof. Furthermore, there already exists in other laws, many similar provisions. There are a number of them.

Senator Asselin: Not many, only two.

Honourable Mr. Lalonde: I believe there are many. However I will let the officials of the Department of Justice testify on that subject.

I do not want to get involved today, Mr. Chairman, in a debate on this problem.

I would prefer, if it is possible, that you request from an official of the Department of Justice, responsible for the application of this law, to explain the law as it now exists. I believe that, for now, it would be advantageous for you to

discuss this question with the official responsible for that topic.

The Chairman: I can tell you, Mr. Minister, that we intend to invite a representative of the Department to discuss that subject.

Honourable Mr. Lalonde: Good. Thank you.

[Text]

Senator Buckwold: Mr. Minister, my question is a very simple one, but one which I know is worrying Canadians across the nation. Although you referred to it briefly in your opening remarks, I should like to get a statement from you on the relationship of marihuana users eventually moving into heavy drugs, such as heroin. As I say, you casually referred to this in your statement. From the point of view of this committee, this subject will be brought forward time and time again. Of all things, even including health, this is the number one concern of the average Canadian.

Has your department conducted any studies? Do you have any statistical information? Are you able to allay the fears of Canadians that the kids who start on marihuana to some extent will move into heavier drugs, or, as we sometimes see, whoever is on heroin started on marihuana? This is sometimes said. I think we would like to hear from you in this regard.

Hon. Mr. Lalonde: This is indeed a fundamental question that worries a lot of people. If you do not mind, I will put our view on this subject on the record. I think it is something that has to be put very carefully and clearly, because it is such a fundamental question.

Our view is that it has not been established that there is any pharmacological property in cannabis which might lead to a need or craving for other drugs. I refer you to the Cannabis Report of the Le Dain Commission at page 130 in this respect. No one has ever established that drug users necessarily crave stronger and stronger kicks (if I may use the expression), that they inevitably tire of one drug and take something more potent. Alcohol users, for example, for the most part level off at a certain pattern of use of that drug and are not invariably driven to drink more and more, or to switch to more potent drugs.

It does seem apparent that persons who ultimately use drugs which have much more potent mind-altering and/or dependence-producing effects than cannabis are:

... strongly predisposed in that direction by personal, social and economic factors.

That is taken from the Cannabis Report at page 129. Their use of cannabis is but one manifestation of their already formed propensity to experiment with drugs.

Some persons who use cannabis are never brought into contact with other aspects of the drug culture at all. They acquire cannabis from friends and are never exposed to any other illegal drugs. As a matter of fact, in your debate in the Senate there was reference to an approximative figure of one million Canadians who may have at one time or another used cannabis. If there were an automatic causal connection between hard drugs and soft drugs we would have had a lot of very serious cases on our hands in the country; certainly many more than we have at the present time.

By and large, persons who are exposed to cannabis are more likely than the rest of the population already to have

friends and acquaintances who use other drugs, and who know how to acquire other drugs. It is fairly widely accepted that such drug using friends are a major influence on a person's decision to experiment with drugs. Cannabis itself is part of the whole multiple drug use picture, but it cannot be isolated as a stepping stone to other drugs or as a causal factor in other forms of drug use. There is an old Latin saying in this respect: *post hoc, ergo propter hoc*—After this, therefore, on account of this.

Senator Sullivan: Might I ask the minister a question, in view of what he has just stated? Dr. Morrison might answer it. In view of the experimental work that has been carried out to date, are we in a position to say anything of a definitive nature as to the course that users of marijuana or cannabis are more likely to follow? The recent work of the Department of Health, Education and Welfare in the United States appeared in the "Alcoholic Addiction Research Journal" the other day. That might lead us to think there is a possibility such progression will eventually occur.

The Chairman: Senator Sullivan, this is a question which I believe Dr. Morrison should answer.

Senator Sullivan: That is fine.

The Chairman: I ask the committee to excuse the minister at this stage, with the understanding that he will return towards the end of our hearings for further questioning. Thank you very much, Mr. Lalonde.

Dr. Morrison will answer Senator Sullivan's question.

Dr. A. B. Morrison, assistant deputy minister, health protection branch, department of National Health and Welfare: Honourable senators, there is no question that we do not yet know all that there is to know about cannabis. Undoubtedly we will learn a lot more in the next 20 years than we know at this point in time. We cannot say definitively, in the sense of absolute scientific proof, that there will never be a relationship shown between cannabis use and a progression to other kinds of drugs. Certainly I know of no reputable authority in the field who seriously believes that there is an inevitable cause and effect relationship between cannabis use and inevitable progression to the use of hard drugs such as heroin.

There does not seem to be on pharmacologic grounds any preposition requiring the user of cannabis to progress inevitably, and we do know that there is a lot of empirical field evidence from cannabis users who by the hundreds of thousands do not progress. These kinds of relationships are very difficult to establish, because a statistical relationship between one event and another event does not necessarily prove cause and effect. For example, obviously—and the hippies will feed this one back to you—everybody who takes cannabis once took mother's milk, so you might assume that mother's milk is a prerequisite for cannabis use. You can see the obvious flaws in falling into that kind of trap.

It is therefore difficult to say definitively, and I know of no medical authority who at this point in time seriously believes, that there is a cause and effect relationship proven. That is not to say that there is not need for very close scrutiny of this problem, because it is obviously very central to the whole issue of cannabis safety, and a need for continuing experimentation and concern about it. However, at this point in time the data are not hard and are not at all promising in showing a causative relationship. Of the 23,000 or so people, most of them youngsters, who came to

our attention last year because of cannabis use, approximately 2,300, or about 10 per cent, were also known to be involved with other drugs. This might be amphetamines, heroin, MDA, LSD or something else. However, only about 10 per cent were known to be multiple drug users. Again that is not definitive proof, but it does not point in the direction of a direct cause and effect relationship.

Senator Sullivan: Would you include alcohol in that?

Dr. Morrison: As a relationship? I think that Le Dain, who looked at this very closely, and who talked to most members of the bio-medical community in this country, would believe that there is no relationship proven between alcohol use and cannabis use. He would say that there are some probable progressions involved in the drug field; not in the cannabis field.

For example, those people who use amphetamines intravenously and have got over the fear of the needle seem to be just one jump away from heroin use. There seems to be a much closer relationship established there. But the smoking of marihuana and the use of heroin, for example, by intravenous injection are not well established as cause-and-effect related.

Senator Laird: Mr. Chairman, to follow that up with the general question which I posed to the minister, actually, many of use are concerned that since we cannot get any definitive answers the only hope we have is to ask these same questions 25 years from now or 50 years from now, or something like that. Perhaps this is not fair, but has Dr. Morrison any thoughts as to how long it will take to get some definitive answers on the very questions that are being asked here now?

Dr. Morrison: Well, senator, cannabis has been used by millions of people over at least 2500 years. And yet when serious scientific research began on the pharmacology and toxicology of the compound only 3, 4 or 5 years ago, everyone was just astonished to find that we knew essentially nothing about it. So we really are not starting from a very big data base and we will have to build up a lot of data before we can make final conclusions.

Nevertheless, this bill is an attempt by the government to recognize that there is movement and there is social concern. You do have to balance what you know against what you perceive to be the risk, and I guess you will have to make that judgment every year from now until the millenium, because the facts will change continuously. What we know about the safety of the drug or the increasing evidence of its danger, really, will have to be judged against the kinds of sanctions society wishes to place against it.

Senator Laird: But you do agree that it certainly cannot do you any good, and that in all likelihood it will do you harm?

Dr. Morrison: There is not the slightest evidence that it does you any good.

Senator Laird: Exactly.

Dr. Morrison: In fact, one of my senior physicians returned just in December from a conference in Savannah, Georgia, which was an attempt to bring together the very best people in the world who are interested in various countries about the safety of cannabis. I could list at least ten areas where there is serious concern about the health effects. There is really no serious question about it: canna-

bis is a dangerous drug. There is no way that you can cut it any other way. You cannot say in quantitative terms exactly how dangerous it is. You cannot "prioritize" and put it in a definite order in comparison with other drugs, but there is very wide agreement that cannabis is, in fact, a dangerous drug.

Senator Laird: Obviously, in your department you believe that the proposed bill is likely to be the best method of dealing with this problem involving a substance which you admit is harmful. Is that a fair enough comment?

Dr. Morrison: Yes, I think that is a fair enough comment. There is the continual problem of trying to balance the social effects of giving criminal records to 20,000 or 30,000 people a year against the fact that there are harmful effects associated with the drug. It is an attempt to keep those two factors in balance that led to the formulation of this bill.

Senator Laird: Right.

Senator Prowse: In other words, doctor, so long as we were attacking cannabis under the law as it now stands, the attack upon cannabis was in itself causing damage which was unnecessary, and this is an attempt to get rid of that kind of damage. Am I correct?

Dr. Morrison: That certainly would be the view that Dean Le Dain had: that the weight of the law has fallen with great unevenness on Canadians; that there are probably a million people who have used the drug and yet there are perhaps 20,000 a year who pay a legal penalty for that. The present law has not had the flexibility in it to permit differentiation in the courts between the "amateur" and the large scale, highly professional, commercial trafficker, who is a very shrewd and completely immoral and venal individual who may be trafficking in millions of dollars of cannabis a year. It is difficult to differentiate between that kind of person and the person on the other side who has, relatively speaking, an amateur, an amateur, high school kind of operation.

Senator Prowse: The experimental type?

Dr. Morrison: That is right.

Senator Langlois: Is this the only objective sought by this legislation?

Dr. Morrison: I am sure the minister would be better prepared to talk about the objectives of the legislation providing more flexibility; I see the legislation putting the law in fact into line with what the law is in practice, and really it is bringing the whole provisions of the law into line with current sentencing practice. And I see the law removing an anomaly which presently exists in which cannabis is called a narcotic, though, for all kinds of medical reasons, it is not a narcotic. So that is what the law is intended to do: to provide more flexibility into recognizing that cannabis is not a narcotic and, furthermore, to bring the actualities of the law as written into line with the present sentencing practices in Canadian courts.

The Chairman: Are the amphetamines and LSD narcotics?

Dr. Morrison: No.

The Chairman: Is that why they are governed by the Food and Drugs Act?

Dr. Morrison: Precisely. It is precisely why they are not under the Narcotic Control Act. Amphetamines are stimulants and LSD, for example, is a hallucinogen. Both of them are controlled under the Food and Drugs Act.

Senator Norrie: When people are taking cannabis there is a definite change in personality. You notice a great change in them, don't you?

Dr. Morrison: You may. It depends upon the level of use and it depends upon a whole series of things. Clearly, some personality changes are not at all unusual in heavy, habitual cannabis users.

Senator Norrie: As a rule their defences are let down, they become lackadaisical and they more or less drift. They are not the dynamic personalities they used to be, as a rule. Is that not so?

Dr. Morrison: The so-called "amotivational syndrome", which is a hard thing to define but which is probably real, is characteristically seen in many but not all heavy, habitual cannabis users. These primarily young men become unkempt in their dress. They don't really care what they look like, they don't care to work. They seem to exist for the drug scene and for what they can get out of it, and much of their motivation to work and to succeed is lost. In our society, where we are very much success-and-activity oriented, that is quite a difference from what we would normally expect to see in young people.

The Chairman: You are drawing a distinction between a heavy user and the occasional user?

Dr. Morrison: The evidence which Dean Le Dain adduced was that it is difficult to see any change in behaviour in the occasional user of cannabis. The college student, who, for example, may smoke cannabis once a month, or something like that, does not show in general a decrease in marks or an aimless drifting through life or a loss of motivation or a loss of activity or a loss of life goals. But the heavy, habitual user, who obviously has more chance to have damaged his head because he is taking more active ingredients of the drug, may well be in that situation.

Senator Norrie: The very fact that his defences are down and that he is becoming more lackadaisical, does that not make him more susceptible to being led around by the heavier dealers in drugs and that sort of thing?

Dr. Morrison: It all depends.

Senator Norrie: He is eventually going to become a victim to some of these other leaders?

Dr. Morrison: It all depends upon the extent to which he associates with them.

Senator Norrie: Oh, sure, but they are going to be there.

Dr. Morrison: They are in society. There is no doubt.

Senator Norrie: Yes. That is the point I want to make.

Senator Rowe: I am not sure, Mr. Chairman, that I should ask this question at this time, in fairness to Dr. Morrison. I should prefer to ask it when the minister is here, but I will have another time to do that. The thing that concerns me is the failure, so our legal friends say, of this bill to distinguish between traffickers.

Let me give you a couple of examples of what I mean. We have at this moment under indictment in St. John's a medical doctor charged with bringing into Canada between \$2 and \$3 million worth of cannabis. If he is convicted he will get seven years in jail, just as the 21-year old girl got two weeks ago, who had come into Gander from Europe with a quantity of marihuana in her possession. She got seven years in jail, and that, I understand, is the least that the magistrate could give her. That sentence is mandatory.

Before that, a few months ago, a 19-year old lad came into Canada, who had a broken leg. He had a cast on, and had some marihuana tucked down in the cast. The RCMP apprehended him—they got to know about it, were probably tipped off somehow or other—and he got the seven years, too, merely for importing it. There was no charge of trafficking there. He just brought it into Canada.

Now, what about the case where, let us say, a group of college students is meeting together, and they are having a few joints, and one says to the other, "How about a joint?" and passes over a two-dollar bill and gets the joint? There are people in jail at this moment for doing that in Canada—young people. We have to remember what we are talking about here. We are talking about people between the ages of 16 and 24 or 25, many of whom have been, or who are, or who will be, college students, who are facing potential conviction. How do we distinguish between the trafficker who sold his friend the joint, or a few joints, for a ten dollar bill, and the better known type who goes around trying to seduce people into buying his wares?

Dr. Morrison: Senator, I think the point you make—and it is a very good one—illustrates one of the very central reasons why this bill is being introduced. The present law simply does not have that kind of flexibility. You talk of importing problems, and about people coming into Gander, or to one of our other airports, with cannabis on them. At present there is a mandatory seven-year penalty involved.

According to section 50 of the proposed bill, a great deal more flexibility will be permitted, because the new bill will say that, for importing, on summary conviction there will be imprisonment for a term of not more than two years, and upon conviction on indictment there will be imprisonment for not less than three nor more than 14 years. If the person can show that he was importing or exporting it for his own personal use, the mandatory minimum will not apply. You can see that there is much more flexibility built into this new bill than existed previously. It is an attempt to give the Crown the ability to differentiate between the professional trafficker or the professional importer, and the college student who is bringing back an ounce of grass or half an ounce of hashish.

You mention also the problems of trafficking, the problems of differentiating between the college kid who hands his friend two "j's"—two marihuana cigarettes—and gets a couple of dollars back, and the commercial trafficker. The present law does not provide flexibility in such cases, but the new law will, because it proposes that on summary conviction for trafficking there may be a fine of \$1,000 and/or 18 months, that is, it does not necessarily mean jail; but if it is a commercial kind of operation, and therefore the Crown proceeds by indictment, there is a possibility of a sentence of up to 10 years in prison. There is therefore great flexibility provided to differentiate between the commercial scale trafficker and the small scale, college student kind of operation.

Senator Langlois: Dr. Morrison, many references have been made this afternoon to kids and to students. Are there any statistics to show that users are within a certain age group or groups.

Dr. Morrison: Yes, senator, there are.

Senator Langlois: We may be leaving a wrong impression, if the majority of users are not to be found among young people.

Dr. Morrison: As a matter of fact, they are to be found among young people. All the evidence that we have indicates that the great majority are under 24. I can give you, and will be happy to pass out to you, information that shows the age groupings of users of cannabis in 1973, and you will find that the median age is 20 to 24. Of a total of 23,251, 9,504 were under 20; 9,463 were 20 to 24, and from 25 to 29 there were 2,476. Above that age, it drops off to just a few hundred. There is some use of cannabis products by older people, but the great majority of users are young people of 18, 20, 22—senior high school or college age students. The data are given in the copies that I am circulating.

Senator Langlois: Would not the statistics indicate that even if you are a cannabis addict in your younger stage of life, you quit after a while, and you do not carry it on into adult life?

Dr. Morrison: The whole wave of cannabis use in this country has been too recent to say that definitely. The people who lead these kinds of social waves tend to be young people. They tend to be more willing to experiment. They seem to be less likely to have selected a drug for their lifestyle. They tend to be the avant-garde of society. It is difficult to say whether, in the long run, there will be a general increase in the age of cannabis users, or whether those who started at 18 will, at 38, still be using cannabis. We do not have enough evidence to say.

Senator Langlois: Is there an indication that this addiction of young people is due to cannabis being more within their reach than any other drug?

Dr. Morrison: I do not think we can definitely say that, sir.

Senator Langlois: These are very important questions, to my mind.

Dr. Morrison: We simply do not know, at this stage of the game. There is some evidence that many young people will experiment with cannabis, and then drop it; and in many young people it appears to be part of the general maturation process. They just grow out of it and drop it.

Senator Langlois: You do not necessarily conclude that cannabis is not a habit-forming drug?

Dr. Morrison: There is considerable evidence that cannabis is capable of producing psychological dependence, and evidence is beginning to appear that it also produces a mild physical dependence.

Senator Prowse: That is, if it continues.

Dr. Morrison: Yes, of course.

Senator Neiman: Do these statistics include a general picture of the cannabis usage across Canada, so as to give the committee an idea of the number of users, the number

of convictions in the various categories that we have been talking about, such as trafficking, and so on?

Dr. Morrison: I believe we have that information.

Senator Neiman: I wonder, with regard to the older groups, whether the law enforcement officers simply had not bothered going after the older age groups, such as lawyers, or professors, or teachers and other such categories.

Dr. Morrison: Certainly the middle age, upper class party is less likely to be crashed by the cops than a party in Yorkville.

Senator Robichaud: I believe the question that so confused me was partly answered by Dr. Morrison, in response to a previous question, but I am still somewhat confused. We seem to make a great deal of distinction between the trafficker and the person who possesses marihuana, or cannabis, for his own use. Now, the one who has possession of marihuana for his own use certainly got it from a trafficker, somehow, along the way. That is one side of the picture. On the other side, we have sections in the Criminal Code dealing with the person who is accused of having possession of stolen goods. The courts deal almost as seriously with the person accused of being in possession of stolen goods as they do with the person accused of the original robbery. Both the possession of stolen goods and the possession of marihuana are illegal. The possession of marihuana is illegal in this country at the moment. How is it that we draw such a great distinction between the trafficker in marihuana and the one in possession of marihuana for his own use, while we do not do so between the robber and the person in possession of stolen goods? The two latter are dealt with on the same footing, or with the same degree of seriousness, by the courts.

Dr. Morrison: The line of reasoning there, senator, goes something like this: the person in possession of cannabis may well hurt himself, but he is, relatively speaking, hurting only himself. The trafficker, on the other hand, is the major way by which the use of the drug is spread throughout society. He is the main agent of contagion, if you want to look at it in that way. He is very likely to be in it for money, and great sums of money are made by professional criminal gangs in the cannabis field. The trafficking in cannabis has changed remarkably over the last three or four years, and we no longer have the amateur type of operation conducted by college students for themselves and their friends. We now have highly organized and highly professional criminal gangs with roots and connections around the world. They bring in thousands of pounds of material at a time which can be worth millions of dollars. It has been felt that the major attention and the heaviest weight of the law should fall on such people, because they are the major agents of contagion in spreading cannabis throughout society. There is, therefore, a distinction between them and the simple possessor who admittedly hurts himself, but who does not influence or corrupt the other elements of society as effectively as the trafficker does.

Senator Laird: Have you noticed any tendency to import hashish rather than marihuana because of the bulk involved in the case of marihuana? Le Dain pointed out, as you probably know, that the importation of marihuana may be curtailed because of its bulk whereas hash, being more concentrated, is not as bulky.

Dr. Morrison: I have some samples of those products here, which you might like to see, as they clearly indicate the difference in bulk involved. With your leave, I should like to show them to you.

Senator Laird: It would be interesting to see them.

Dr. Morrison: Here are two samples of hashish; the blonde material is the so-called "blonde hash" from Lebanon, and is a very good quality hashish. This is another sample of Lebanese hash brought in in linen bags. These are called "soles" because they look rather like a sole. This is worth \$250. It is very easy to conceal and it is very easy to bring in a large amount of it so concealed.

This is so-called "black hashish" from Afghanistan. It is a very high quality material and it is very easy to conceal and to import in considerable amounts. On the other hand, I have here two pounds of marihuana which looks like alfalfa hay and you would have great difficulty in trying to bring in 500 pounds of it unless you had a hayrack or something like that.

Senator Laird: What would that two pounds be worth?

Dr. Morrison: The two pounds would be worth about \$500. Marihuana at this point in time is worth about \$225 a pound. Hash, which is more concentrated and has from five to fifteen times the potency of marihuana, is worth on the market in Toronto now between \$800 and \$1,200 per pound.

Senator Laird: What is the difference?

Dr. Morrison: The difference is related to the concentration of the active ingredients. We have seen in the last couple of years a rather alarming trend in the introduction into this country of so-called hash oil, which is a concentrate of hashish. If this packet contains 10 per cent tetrahydrocannabinol, then this other may contain as much as 65 per cent, and you can see that it is possible to bring in a smaller volume an equivalent potency of material—which makes smuggling that much easier and the bringing in of the illicit stuff that much easier.

Senator Langlois: What is the colour of what you have in that bottle?

Dr. Morrison: This is black; it is really just a solvent extract of hashish. You mix this up with petroleum ether or hexane or any one of a dozen different solvents. You concentrate the tetrahydrocannabinol in this material here, and that is the so-called hash oil. It is worth between \$5,000 and \$8,000 a pound.

Senator Hastings: How is it taken?

Dr. Morrison: It is used in the same way as hashish; it is dropped on to a cigarette or put into tea. There are a million ways that you can use hashish. People around the world have all kinds of ways of using it.

Senator Fergusson: How do you break down that solid piece that you have there so that you can use it?

Dr. Morrison: You take a little piece off the edge, and you can put it on a needle and smoke it in that way by breathing in the fumes, as the fumes spiral up. Or you can chase it with a milkshake straw, and it is called "chasing the dragon's tail" from the old Chinese habit of taking opium in that way. You can also break a little off and put it on the end of a cigarette or you can make a decoction from it and drink it like tea. The Indians do that.

Senator Langlois: Can you chew it?

Dr. Morrison: You can chew it, but it probably would not be very tasty. There are many different ways in which people take hashish.

Senator Laird: Can it be taken by hypodermic?

Dr. Morrison: No, it cannot.

Senator Laird: What about hash oil? Can it be diluted and taken by hypodermic?

Dr. Morrison: No. You would kill yourself without any question if you tried to take that stuff. It is a very impure extract to begin with and anyway the solvent itself would kill you, and all the guck and gunk would kill you, so it just would not be taken that way. It is just an attempt by the illicit trade to reduce the volume and thus make it easier to escape detection. It makes it a very potent material.

Senator Robichaud: That blue pack that you have there is worth \$500. For a regular drug addict, how long would that pack last?

Dr. Morrison: Oh, a long, long time. A marihuana cigarette, and we have some of those in all shapes, kinds and colours, which costs about \$1 and has about three-tenths of a gram of marihuana—

Senator Robichaud: What is a long time—six months, or ten years or what?

Dr. Morrison: Well, it depends. If you want to smoke-up continuously, it takes less time to run through two pounds. But it would take a good long time, several months, certainly, before you could use up that much for your own personal use.

Senator Neiman: What would you define as a heavy user? Is it someone who uses it on a daily basis?

Dr. Morrison: I have known youngsters who were smoking-up three or four times a day and were essentially intoxicated continuously.

Senator Neiman: Would that be three or four cigarettes?

Dr. Morrison: You might take six or eight cigarettes or something like that. But if you were taking five or six marihuana cigarettes per day on a continuous basis, there is no doubt that you would be a heavy user. That is far beyond the normal extent of use.

Senator Langlois: How long would it take anyone to smoke one of the cigarettes?

Dr. Morrison: They burn fairly rapidly. Usually they are rolled by amateurs and not by professional tobacco companies, they do not have the tightness that ordinary cigarettes have, so they burn fairly rapidly; it does not take very long.

Senator Asselin: It is also smoked by pipesmokers?

Dr. Morrison: Yes, we have some hookahs here. This is one example of a water pipe or a hookah. They come in all sizes and shapes. Sometimes the police have found them with six outlet ports on them, so six people could sit around in a circle and smoke-up. On the other hand, you may have only one outlet. You can bubble this through water or through wine or whatever you happen to like. Those were seized in raids on illicit establishments.

Senator McGrand: On this list we have here, for 1973, the number of males given is 20,600 and the number of females given is 2,600, so there are practically ten times as many males as females using these products?

Dr. Morrison: That is right.

Senator McGrand: In the use of tobacco, the rate as between male and female is fairly even.

Dr. Morrison: It is not quite even yet, but it is becoming so.

Senator McGrand: Why is there such a great difference between the male and female use of marihuana? I am sure you have made some observations on this.

Dr. Morrison: I don't think anyone knows with any real degree of definitiveness. It may be that it is related to the more aggressive nature of the male and to his need to prove his manhood, or maybe it is pre-international women's year and women do not feel as liberated as men—there may be all kinds of reasons. I do not think we can state what they are definitely. All we know is that the sex differential holds, and that it holds across the whole country.

Senator McGrand: There are also indications that males, having smoked marihuana for a while, have a tendency to give it up. Perhaps they have demonstrated by that time that they are virile. Is that correct?

Dr. Morrison: We certainly know that many youngsters who try smoking marihuana do give it up. I should mention to you that that same sex difference holds for other illicit drugs also. It is not related only to cannabis. Heroin users tend to be men; LSD users tend to be men and amphetamine users tend to be men. There is a preponderance of males—who, for some reason or other, become more involved with illicit drugs than females.

Senator McGrand: The reproductive organs do contain a lot of fat; if that were destroyed would the rate of reproduction be lowered in cases of prolonged use of marihuana?

Dr. Morrison: No senator, there is not yet definitive proof of that situation, one way or the other. We do not have the data in that area. It is known, from both animal and human studies, that there is a decrease in the levels of male hormone in heavy, habitual cannabis users. The testosterone levels in the blood of those who use marihuana habitually and heavily are lower than they are in the non-user. That seems to be a temporary effect, in the sense that if a person stops using marihuana the blood testosterone levels go back to normal. There has been, however, some speculation that decrease in the testosterone levels may be in some way related to this amotivational syndrome, the lethargy, lack of aggressiveness, and so on. At this stage of the game we do not know whether there is a carry-over into human reproductivity. We do know that cannabis will cross the placenta, at least in animals, and get into the fetus. In animals, again, there is evidence that it can cross the placenta and reduce male hormone levels in the developing male fetus, causing some feminization of male persons and so on.

Senator Sullivan: Did the Boston group not prove that it did have some effect on the reproductive apparatus?

Dr. Morrison: In my view, the data are suggestive, but not yet proved. A critical question in connection with the

health effects of cannabis related to whether or not it induces congenital malformations. We do not have good data in that area. In many countries where cannabis has been used for hundreds and hundreds of years the health statistics are insufficiently precise to permit the determination of whether or not there has been an effect from cannabis. It certainly is something with which we must be very much concerned, because there is a real possibility of it.

Senator Sullivan: In the male breast.

Dr. Morrison: There have been organic effects reported; there is no doubt about that. Again, it is the old question that all the data are not yet in. We do not yet know; we are only really five years into research on marihuana. The evidence does indicate reduction in male hormone levels and possible interference with reproduction. We do not know much more at this stage.

Senator Prowse: Our experience only extends back about 12 years.

Dr. Morrison: In 1964 there were 28 convictions in this country for marihuana, almost all of which involved American jazz musicians who came here to play jazz music. Last year there were 19,924 convictions, so we have experienced an explosion during the last decade.

Senator Buckwold: Dr. Morrison, I wonder whether you could give us an overview of the drug scene and what is now happening? Has there been, in fact, some decrease in marihuana use? I am thinking specifically of young people moving into alcohol use and the relationship of marihuana to the other Food and Drugs Act drugs such as LSD, amphetamines and this type of thing? Your comments on that scene might give us a little clearer perspective when we consider what is happening.

Dr. Morrison: I believe there has been in the last few years a general belief on the part of at least some adults, perhaps on the bases of some wishful thinking, that the drug scene has been stabilizing and, in fact, decreasing. There is no evidence that that is true. There is no evidence that drug use in toto is decreasing. It is just being talked about less.

The evidence we have with regard to cannabis, for example, is that cannabis use amongst many youngsters, high school and early college students, has become so institutionalized that it is no longer a matter of major concern for them and no longer is it considered to be particularly cool one way or the other.

In terms of specific drugs, we have some evidence that the use of LSD has been reducing over the last three or four years. We have some evidence that cannabis use is still going on and we expect that there will be more cannabis convictions in 1974 than there were in 1973. There were more in 1973 than in 1972.

Now, those are not accurate barometers of total usage, because they represent only a small proportion of the total population of users and they may be more significant in the law enforcement field and all kinds of other areas. Nevertheless, from our street workers we do not have evidence that the use of cannabis is decreasing. There seems to be a real fear in relation to the increasing use of alcohol by teenagers. The reduction in the drinking age has meant that many youngsters who would not have been drinking until they were 21—or at least 19 and lying about it and saying they were 21—are now lying about it at 15

and saying they are 18. There is considerable concern amongst knowledgeable health professionals that we will experience a real problem in connection with teenage drinking during the next few years.

In terms of other drugs, we have had real problems in the last couple of years in connection with MDA, which is an amphetamine derivative. Very effective work by the RCMP, in breaking up a number of clandestine laboratories which were producing large-scale amounts of this drug, has decreased its availability on the streets. Again, however, that is a temporary situation and there is a continual attempt to get back into the business, because of the large amounts of money that can be made.

So, in toto, there is no evidence of a decrease in the drug scene; no evidence that cannabis use is decreasing; evidence that LSD use is probably decreasing; some of the amphetamine use at the moment is in a temporary hiatus, but we suspect that there are attempts to push it back up again.

Senator Sullivan: What about heroin?

Dr. Morrison: I am sorry, sir; you are right. Heroin use has increased in this country in the last four or five years and the type of person involved with heroin use has changed in that time. In 1960 or 1965 we had stabilized at approximately 3,000 to 3,500 heroin users, 75 or 80 per cent of whom were on the West Coast. These tended to be middle aged men, of at least 35 or 45 years of age. They were primary heroin addicts, the first drug they had ever used being heroin and they tended to have criminal records and relatively poor education. The kind of heroin user we see now tends to be much younger, better educated, a multiple drug user, much more sophisticated and a lot sharper and shrewder than the old time hype was 10 or 15 years ago.

Senator Buckwold: How many of them do you estimate there are?

Dr. Morrison: Probably somewhere between 20,000 and 25,000. The RCMP are of the view that there are probably something in the order of 20,000 or 25,000 heroin addicts in this country.

In the last couple of years we have seen a drug which was previously almost unknown in Canada—cocaine—brought in here in increasing amounts from South America by professional smuggling gangs. Once started, it is a very attractive drug for the drug user, because of the incredible rush and sensation that it gives to the user. It seems to us that its use is limited primarily by high price, but the police are seizing increasing amounts of cocaine and have been doing so over the last couple of years.

Senator Buckwold: Does a heroin user get his satisfaction out of using cocaine? Is it an alternative for him?

Dr. Morrison: Generally, if the heroin user cannot obtain heroin, he may use barbiturates or alcohol, or both.

Senator Prowse: Together?

Dr. Morrison: Very often, yes.

Senator Buckwold: But what about cocaine?

Dr. Morrison: No, he usually does not use cocaine. Cocaine tends to be the drug of the sophisticate, or the avant-garde people, those who want kicks. It is an upper, not a downer. Heroin is a downer. It blots out the world.

Cocaine is an upper and gives you this tremendous rush of feeling.

Senator Buckwold: One of the reasons why I very strongly support the bill, other than the fact that it is bringing into law what is happening in the courts, is that there has been a tremendous amount of police effort directed into the marihuana scene, which could very well be directed with limited manpower into the heroin scene or the more serious heavy drug scene. Would you feel this would be an effect of this particular law?

Dr. Morrison: I know it is the wish of the RCMP to be able to concentrate more of their activities on the professional aspects of drug trafficking, whether it be trafficking in hashish, marihuana or heroin, rather than spend an inordinate amount of resources in simple possession charges.

Senator Buckwold: So that it could be beneficial to the country, in that the kind of concentrated police effort that we need in the heavy drug scene would become possible? Certainly, when I look at the provincial statistics, it is obvious that some provinces are much more zealous in their prosecutions. For example, I notice that Saskatchewan, which is my own province, had 1,191 convictions in 1973; and Manitoba, with a slightly larger population had a little better than half that number. I would guess that the scene is not that much different. The point I am trying to make is that we are spending an awful lot of time harassing some of the kids when police work could be directed into more serious channels.

Dr. Morrison: With respect, sir, if you do have witnesses here from the RCMP, they would be better able to answer that.

The Chairman: We shall have witnesses from the RCMP.

Senator Laird: Dr. Morrison, one thing I am sure we are going to face in our examination into this problem is the allegation that marihuana is no worse than alcohol in its effects and possibly no worse in leading to addiction to harder drugs. I think I know the answer you are likely to give, and I know what Le Dain said, but, for the record, would you be willing to give us your ideas?

Dr. Morrison: Yes. To say that the drug is no worse than alcohol is not giving it very much of a recommendation. The appalling social cost that this country pays for alcohol abuse indicates that we as a society need to be very cautious about introducing other legal intoxicants into society. We do not handle very well the legal intoxicants that we have, and we pay an inordinate price in terms of public health because of alcohol abuse.

The evidence also indicates that alcohol has become so interwoven into the fabric of our society that it would be very difficult to delegalize it. In any attempt, therefore, to extend the legalization of any other substance, we must recognize that once things are made legal, it is very difficult to make them illegal again.

Senator Laird: It is like letting another mad dog loose. They are nice creatures, but if they go mad they are certainly vicious. It is letting two mad dogs loose, is it not?

Dr. Morrison: I do not get very enthused about people who tell me it is no worse than alcohol. It can be pretty bad and be no worse than alcohol.

The Chairman: Dr. Morrison, I notice that the bill increases the penalty on indictment for cultivation. Can cultivation be effectively controlled? I am told that it is very easy to cultivate marihuana.

Dr. Morrison: We used to think it was not possible to produce good quality marihuana in this country. There used to be a kind of prestige value to bringing in Acapulco gold, for example, and material from Mexico. But three years ago, in an attempt to find a domestic source of marihuana for medical research purposes, we grew a whole series of different strains of the plant, obtained from seeds which we picked up from all around the world. We had over 300 of these strains. We grew them here in Ottawa and found that it is, in fact, possible to produce very good quality marihuana with high THC content under Canadian conditions. It is not necessary to import marihuana in order to get a high quality product.

The concern about cultivation is that cultivation is almost the same as trafficking it being a major vehicle for introducing large quantities of the drug into Canadian society. The police have made seizures, for example, on Marihuana plantations in Ontario and British Columbia which consisted of several acres. I can recall one which had 35,000 plants, would have produced several tons of plant material, and would have been worth a very great deal of money. That was found by aerial surveillance, just by chance.

We hear of occasional seizures through the police of very large plantations of home-grown marihuana. Some of it is of very high potency indeed. The concern which is reflected in the bill about the need to maintain stiffer penalties against cultivation is because cultivation is effectively the same as trafficking—It introduces or can introduce, large amounts of drug into society.

Senator Buckwold: What percentage of the quantity which is in use would be cultivated in Canada?

Dr. Morrison: I do not think the police feel that they necessarily apprehend all the material that is cultivated. I would not want to try to guess. The great majority is brought in, primarily because it is possible to purchase a kilo of hash in Morocco or Lebanon for \$25 and bring it in here and sell it for \$1,000 or \$2,000. You can import it with relatively less chance of apprehension than if you try to grow the same amount here, because even in this country people have neighbours and friends who will talk, and it is not that easy to grow large amounts unless you go to an isolated area.

Senator McGrand: You mentioned growing some here in Ottawa. If the Ottawa brand is of high quality, is it possible that you may be able to grow a brand of marihuana that would be less dangerous than the present product?

Dr. Morrison: We ourselves do not have resreach on that. We do know that many varieties of cannabis sativa do not produce any of the tetrahydrocannabinol at all. There are really two basic gene types involved. One is a cannabinol producer and the other is a fibre producer, because cannabis sativa is the hemp plant. Many of the varieties produce hemp and only hemp. Some of the others produce cannabinoids, the most prominent which is the tetrahydrocannabinol. It clearly is possible to use low potency material. There is a lot of low potency material that gets on the street. We know that the stuff which we grew here in Ottawa was perhaps four or five times more potent than

the average material which you can pick up in Toronto a lot of which diluted with lawn clippings, meadow hay, twigs, grass, or anything else. There are as many rip-offs in the drug scene as anywhere else.

Senator Laird: As a matter of fact, this plant cannabis sativa will seed itself. will it not?

Dr. Morrison: Yes, it will.

Senator Laird: You may be carrying on a nice farming operation and suddenly find yourself with a lot of this cannabis sativa on your farm.

Dr. Morrison: Precisely.

Senator Laird: I know precisely one case where that happened.

Senator Prowse: You would need a lawyer at your elbow.

Senator Laird: There was a lawyer. I was there.

Dr. Morrison: Large amounts of cannabis were grown in the American mid-West during the Second World War to provide a domestic source of hemp, and some of those varieties went wild and reseeded themselves and are the source of some of the mid-Western illicit material used in the United States.

Senator Hastings: I was interested in your observations on the use of alcohol and the drug scene. Since we as a society seem to be moving, by this bill, to accepting at least the personal use of cannabis, and marihuana, I wonder whether, in controlling the traffic of this, there would not be merit now in the government taking over the supply, distribution and sale of cannabis and marihuana?

Dr. Morrison: First of all, senator, I do not accept your first proposition, that the bill moves towards the acceptance of possession. The bill maintains legal sanctions against possession. Persons convicted of possession will have criminal records. It is true they will not go to jail, but they will have criminal records. The bill does not move towards the legalization of marihuana at all, and it does not lead to a general acceptance of possession as being a non-crime.

Senator Hastings: You do not think we are following exactly the same as we followed with alcohol?

Dr. Morrison: I don't believe so.

Senator Asselin: Is it not a step forward to the legalization of marihuana?

Dr. Morrison: That is a policy question, which, with respect, I really do not think I should try to answer. That is a question you might put to Mr. Lalonde.

Senator Sullivan: Dr. Morrison, you quoted the most recent findings from Savannah, Georgia, at that seminar. How in the name of God could you legalize marihuana, when we know it is a dangerous drug?

Dr. Morrison: In fact, the government is not legalizing marihuana.

Senator Sullivan: I know, but I ask that question.

Dr. Morrison: I agree with you. There is no intention to legalize marihuana. The government's intention not to legalize it has been made abundantly clear to the public.

Senator Robichaud: We get marihuana from other countries, of course. Is there any country in the world where the production or cultivation of marihuana is legal? Is it always produced clandestinely in other countries?

Dr. Morrison: I do not know of any federal jurisdiction that permits the legal production and use of marihuana. There are large parts of the world's surface where law enforcement is somewhat less vigilant than it might be here, and therefore there is essentially an official winking at the use of the drug. That is really a quasi kind of situation. In legal terms I know of no federal jurisdiction where the drug is a legal entity. We know, for example, that in many parts of the Middle and Far East the use of cannabis is not really controlled by the federal governments at all.

Senator McGrand: Have you any idea of the consumption of marihuana that takes place in those countries, and what effect it has on the people?

Dr. Morrison: There is an eminent Indian scientist who has worked on this for the last 25 years, who is convinced that marihuana does have long-term deleterious effects, but he admits that it is very difficult to get definitive data, because you do not have controlled populations. There is anecdotal evidence about people who are heavy users in Egypt or India, who have all kinds of things wrong with them, but these tend to be men from low socio-economic groups, of low education, with very little chance to progress in the world and they are amotivated. How much of it is related to their environment and how much is related specifically to that drug? How much is related to malnutrition coupled with this, to multiple drug use? It is extremely difficult, even impossible at this point in time, to look at other societies and say definitely, "Here are the pure effects of marihuana." We cannot do it. We just do not have the information.

Senator Sullivan: I have one more question. We have known for hundreds of years of the wide spread production of marihuana in India and Lebanon, but there are very few users in those countries. Does it not seem to be a product of the western hemisphere in the last few years, that this has all come to the front, and why?

Dr. Morrison: I don't really know that it is a product of western civilization. There have been many chronic users in Egypt, for example; there have been many chronic users in the Indian subcontinent, and many chronic users in Southeast Asia, where it grows by the trails in Vietnam and Thailand.

Senator Sullivan: Indian students never use it until they come here.

Dr. Morrison: That is true. Its use in India tends to be restricted to a lower socio-economic group, to people whom you don't see and whom I don't see because they don't come to this country; you have to go there to find them. I do not believe there is evidence, with respect, that it is related to a western society sort of situation. Certainly the large scale profiteering in it is a phenomenon of our society, but the use of it by people in Southeast Asia goes back at least 2,500 years.

Senator Buckwold: Mr. Chairman, I do not have a question, but I want to express appreciation to Dr. Morrison, without intending to conclude the hearing, for emphasizing the continued concern the government has about the use of marihuana, emphasizing the fact that it is a danger-

ous drug, emphasizing the fact that the government is continually involved in its study, emphasizing the fact that marihuana is not being legalized, and that in no way is the government condoning the use of marihuana. I say that hoping that somebody might read what I say and what he has said, to allay the fears of the people that suddenly the government is not concerned, that they have accepted this now as part of our way of life, and that the next step will be to legalize it completely. In my opinion, that is the furthest thing from the policy of this bill. I hope that this attitude of concern will be spread far and wide across the country.

Dr. Morrison: There is not doubt about that. My apprehension of the views of the government is that there is no intention to legalize marihuana at all.

Senator Godfrey: Is there any way you can tell the proportion of occasional users to heavy users? You mentioned the figure of one million people. What would be the proportion of heavy users and occasional users?

Dr. Morrison: We do not have good studies. The sociology of cannabis use in this country is not very well known. The great majority of users are not heavy users. The great majority of users in the university student population, where perhaps half of them have tried it, are only occasional users. The majority seems to grow out of it as they mature. There is good evidence that many people try it a bit and then back off.

We hear anecdotes that the kids tire of it, that it does not give the same feeling of conviviality that alcohol does, for example; you don't stand around and sing student marching songs, as you might with booze. There is a tendency for people, once they have found themselves and got a little better knowledge of their own self image and are not trying to prove their manhood and all this other stuff, to back off from its use. Whether it has the lasting appeal for a large number of people that alcohol seems to have is open to some question. Again I cannot give definite answers, because we are talking about only five, six or eight years' experience in this country on any significant scale.

Senator Godfrey: When you say it is a dangerous drug, can it be dangerous to the occasional user, or is it only to the heavy user?

Dr. Morrison: The evidence, including what we know about the basic pharmacology of this or any other drug, indicates that the more you use it the more likely you are to endanger yourself. There may be particular times of life, however, when its use is proportionately more dangerous. The young person who has not yet reached full emotional and mental maturation, for example, is likely to be more susceptible to the effects of cannabis on cognitive function, or total brain function, or the ability, for example, to have proper memory, because it appears to interfere with memory. The girl who is of child-bearing age would be well advised indeed to stay as far away from cannabis as she can, because of the possibility that it may have some effect. Admittedly it is not completely proven, but there is such a strong possibility that it is good advice for those of child-bearing age to stay away from marihuana. There probably are some susceptible ages; certainly with young people, in particular, with their problems of maturation. For people who are involved in difficult motor tasks, such as driving an automobile or running a piece of heavy factory equipment, or young girls who may become pregnant, the risk may be greater than for the total population.

Senator Fergusson: You spoke about alcohol and drugs. Is it not true that if you drink alcohol, the effects have practically left your body within 24 hours and it is not bothering you at all? Is it not different when you take marihuana? Does it not stay with you longer, and does it not build up?

Dr. Morrison: There is evidence that marihuana, at least the active ingredient of marihuana, which is tetrahydrocannabinol, does tend to accumulate in fatty tissues, and does tend to be found in the body for several days, and perhaps several weeks, after administration of the drug.

Senator Fergusson: Could it stay longer than that?

Dr. Morrison: The data I am familiar with indicates that for at least several weeks you can find it, but you get into analytical problems of detecting very small amounts of it after a while, and the amount does decrease over time. I would not want to leave with you the impression that alcohol comes in and goes and leaves no trace in 24 hours. One has only to think of the cirrhotic livers, damaged hearts, scrambled brains and so on that result from inordinate use of alcohol, to see that certainly it leaves behind its trade mark as well.

Senator Fergusson: But it would not interfere with your driving a car after 24 hours. Twenty-four hours after you have had a few drinks, you can drive your car just as well as you could before. Would you be in just a good condition 24 hours after having taken a certain amount of drugs?

Dr. Morrison: I think there is pretty good evidence that the chronic drunk, who is essentially sodden all of the time, is not likely to be a very good risk at car driving, at the best of times. Also, the clinically observable intoxication from cannabis disappears within a few hours. For example, if you or I were to smoke a marihuana cigarette now, and be high and euphoric, and giggle a bit for a few hours, we would probably be all over it by tonight, by 10 o'clock, or something like that.

Senator Fergusson: Would we? I did not understand that.

Dr. Morrison: It is not a though you are stoned all the while. You are stoned for a while, and you get over the clinically observable effects.

Senator Langlois: Dr. Morrison, do you know of any country or countries where an attitude towards marihuana has been adopted similar to the one we are presently considering in this country?

Dr. Morrison: It is difficult to assess that, because of the differing social values and social mores in other countries, and the presence or absence of identical policies in other countries. To my mind, it would be difficult to assess accurately, because our society is not the same as other societies, and our willingness or unwillingness to accept a given level of an intoxicant drug in society may therefore be different from that in others. We do know that there is a general recognition in other countries, as I understand it, at least, that marihuana is a dangerous drug. I know of no country that is moving to legalize its use. I believe there is a growing movement in the United States to recognize a need for more flexibility in the law, so that you can make the punishment fit the crime more effectively than by using Draconian measures that requires you to put somebody in jail for seven years for importing half an ounce of hashish.

The Chairman: Are you familiar with the recent Oregon experiment?

Dr. Morrison: Yes, I am, Mr. Chairman, and I have deliberately not mentioned it because I have been led to believe that we may be getting more evidence directly from the horse's mouth, so to speak, on that experiment.

The Chairman: We may. But assuming we do not, could you tell us something about it?

Dr. Morrison: I can tell you in general terms that for the last year or so the state government in Oregon has markedly reduced the penalties associated with simple possession. It has not found a great swing towards the use of cannabis by Oregonians, it has not found a general influx into the state of undesirables, it has not found organized crime moving in, and in general it has had a fairly salutary experience. Again we are talking here about a year to 18 months of experience, and it would be wrong to base long term expectations on that; but at this point in time the data from Oregon do suggest that reasonable flexibility in the law, and trying to differentiate between simple possession and trafficking, does not lead inevitably to a great increase in the total amount of use.

Senator Asselin: So it was an improvement, was it?

Dr. Morrison: I believe the Oregonians are sufficiently encouraged to continue it.

The Chairman: Are there any further questions?

I thank Dr. Morrison on behalf of the committee for the very informative session we have had this afternoon. I just hope that senators will forget the careful instructions they were given on how to smoke or drink different forms of hashish.

Senator Langlois: I hope Dr. Morrison gets back home without any mishap with this stuff that he has brought here to show to us.

The Chairman: Dr. Morrison has produced two statistical documents, which I think it might be useful to print with our proceedings, if the committee agrees.

Senator Asselin: I so move.

For statistical documents, see appendix.

Hon. Senators: Agreed.

The Chairman: The committee now adjourns to 10.30 on Tuesday next, when the Canadian Medical Association will present a brief. If the Senate will give us its consent to sit, we will also reconvene at 2.30 Wednesday of next week, when Deputy Commissioner Ross, Criminal Operations, RCMP, and Inspector G. L. Tomalty, Officer in Charge of the Drug Enforcement Branch of the RCMP, will be here to give evidence. That is the only day that we are able to get those witnesses to come. The next meeting of this committee, therefore, will be at 10.30 on Tuesday morning next, the 11th of February, and the following day, at 2.30, with the consent of the Senate.

Senator Asselin: Mr. Chairman, is it your intention to put before the Senate a motion to ask permission for the committee to sit during sittings of the Senate?

The Chairman: Excuse me. We have completed the proceedings here, but I am going to ask the steering committee, consisting of Senator Laird, Senator Prowse, Senator Buckwold, Senator Asselin and Senator Neiman, to meet with me for a short while as soon as we have adjourned. I will then discuss what you have raised, Senator Asselin.

The committee adjourned.

APPENDIX "C"

COMPARISONS - CANNABIS LEGISLATION PROPOSALS

OFFENCE	PROPOSED PENALTIES		EXISTING PENALTIES		LEDAIN CANNABIS REPORT RECOMMENDATIONS			
	PART V - FOOD & DRUGS ACT		NARCOTIC CONTROL ACT		LEDAIN MAJORITY	BERTRAND LEDAIN MINORITY	CAMPBELL LEDAIN MINORITY	
1. SIMPLE POSSESSION Summary -	First Offence A fine of up to \$500 or imprisonment for up to 3 months in default Subsequent Offence A fine of up to \$1,000 or imprisonment for up to 6 months in default		First Offence A fine of up to \$1,000 or imprisonment for 6 months or both Subsequent Offence A fine of up to \$2,000 or imprisonment for 1 year or both		No prohibition against possession	No prohibition against possession	First Offence A fine of \$25 Subsequent Offence A fine of \$100	
Indictment -	No provision		Imprisonment for up to 7 years					
2. TRAFFICKING Summary -	A fine of up to \$1,000 or imprisonment for up to 18 months or both		No provision		Maximum penalty 18 months. Fine in lieu of imprisonment		Same as majority	
Indictment -	Imprisonment for up to 10 years		Imprisonment for life		Maximum penalty 5 years. Fine in lieu of imprisonment			
3. POSSESSION FOR THE PURPOSE OF TRAFFICKING	Identical penalties to trafficking as set forth above.				Same as trafficking but is should be sufficient for accused to raise a reasonable doubt as to his intention to traffic		Same as majority	
4. IMPORTING OR EXPORTING Summary -	Imprisonment for up to 2 years		No provision		Importing and exporting should be included in definition of trafficking but subject to higher maximum penalties		Same as majority	
Indictment -	Imprisonment up to 14 years - not less than 3 years (3-year sentence would not apply where convicted person can prove he imported or exported for own consumption only)		Imprisonment for life minimum 7 years					
5. CULTIVATION Summary -	A fine of up to \$1,000 or imprisonment for up to 18 months or both		No provision		Not a punishable offence unless it is cultivation for the purpose of trafficking. If for the purpose of trafficking, same punishment as for trafficking	All stages of production and marketing should be conducted by the federal and/or provincial governments. Penalties for illicit production and distribution not specified.		
Indictment -	Imprisonment for up to 10 years		Imprisonment for up to 7 years				If not for trafficking - same as simple possession. If for trafficking - same punishment as for trafficking	

TABLE OF KNOWN CANNABIS (MARIHUANA AND HASHISH) USERS IN 1973.

REPARTITION DES USAGERS CONNUS DU CANNABIS (MARIHUANA ET HASHISH) EN 1973.

	<u>M</u>	<u>F</u>	<u>TOTAL</u>	
Prior to 1962	84	15	99	Avant 1962
First recorded in 1962	15	9	24	Relevé la 1 ^{ère} fois en 1962
" " " 1963	50	29	79	" " " " " 1963
" " " 1964	36	18	54	" " " " " 1964
" " " 1965	100	39	139	" " " " " 1965
" " " 1966	301	110	411	" " " " " 1966
" " " 1967	1258	319	1577	" " " " " 1967
" " " 1968	2370	460	2830	" " " " " 1968
" " " 1969	4420	737	5157	" " " " " 1969
" " " 1970	8701	1316	10017	" " " " " 1970
" " " 1971	10610	1435	12045	" " " " " 1971
" " " 1972	11175	1520	12695	" " " " " 1972
" " " 1973	20623	2628	23251	" " " " " 1973

TOTAL 59743 8635 68378

In addition, 2314 males and 118 females were arrested in 1973 who had previous Cannabis records.

De plus 2314 mâles et 118 femelles ayant déjà un dossier impliquant le Cannabis ont été appréhendés en 1973.

AGE GROUPING OF NEW USERS IN 1973.

RELEVÉ DES NOUVEAUX USAGERS SELON L'ÂGE EN 1973.

	<u>M</u>	<u>F</u>	<u>TOTAL</u>
UNDER - MOINS DE 20	8465	1039	9504
20 - 24	8388	1075	9463
25 - 29	2171	305	2476
30 - 34	532	69	601
35 - 39	153	10	163
40 - 49	91	11	102
50 - 59	10	6	16
60 - 69	4	1	5
70 OR OVER - 70 ET PLUS	-	-	-
NOT KNOWN - NON CONNU	809	112	921
TOTAL	<u>20623</u>	<u>2628</u>	<u>23251</u>

PERSONS UNDER 18 YEARS OF AGE INVOLVED IN 1973 CASES.

PERSONNES IMPLIQUEES DONT L'ÂGE EST INFÉRIEUR À 18 ANS EN 1973.

AGE	<u>12</u>	<u>13</u>	<u>14</u>	<u>15</u>	<u>16</u>	<u>17</u>	<u>TOTAL</u>
M	3	11	59	261	853	1852	3039
F	-	1	9	41	99	243	393
TOTAL	<u>3</u>	<u>12</u>	<u>68</u>	<u>302</u>	<u>952</u>	<u>2095</u>	<u>3432</u>

We recorded 23 cases, involving 21 males and 2 females where possession of an offensive weapon(s) was involved.

Dans 23 cas relevés, impliquant 21 mâles et 2 femelles il y avait possession d'arme(s) offensive(s).

PERSONS INVOLVED IN 1973 ACCORDING TO THEIR NATIONALITY.

NATIONALITE DES PERSONNES IMPLIQUEES EN 1973.

	<u>U.S.A.</u>	<u>OTHERS - AUTRES</u>
M	1792	268
F	269	38

The remainder were Canadian, British or of unknown nationality.

La Nationalité des autres personnes était soit Canadienne, Anglaise ou inconnue.

PREPARED BY: Bureau of Dangerous Drugs
Health Protection Branch
Health & Welfare Canada

REDIGÉ PAR: Bureau des drogues dangereuses
Direction Générale de la
Protection de la Santé
Santé et Bien-être Social Canada

UN CERTAIN NOMBRE D'USAGERS DU CANNABIS ETAIENT EN POSSESSION
D'AUTRES DROGUES, ET/OU ONT ADMIS EN FAIRE L'USAGE COMME SUIV:

A NUMBER OF CANNABIS USERS WERE IN POSSESSION OF, AND/OR
ADMITTED USING OTHER DRUGS AS FOLLOWS:

	ONLY EXCLU- SIVEMENT		AND OTHER NARCOTICS ET AUTRES STUPEFIANTS		AND MULTIPLE DRUGS ET DROGUES MULTIPLES		AND RESTRICTED DRUGS ET DROGUES RESTREINTES		AND CONTROLLED DRUGS ET DROGUES CONTROLEES		AND DESIGNATED DRUGS ET DROGUES DESIGNEES		AND SCHEDULE 'F' DRUGS ET DROGUES DE LA CEDEULE 'F'		AND UNIDENTIFIED DRUGS ET DROGUES NON IDENTIFIEES		TOTAL		GRAND TOTAL	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F		
L.S.D.	729	98	-	-	-	-	120	15	1	2	5	-	1	-	2	-	858	115	973	
M.D.A.	456	78	-	-	-	-	2	-	1	1	4	-	-	-	-	-	463	79	542	
HEROIN (E)	113	30	69	14	24	6	18	3	-	-	7	1	-	-	-	-	231	54	285	
COCAINE	53	18	-	-	2	1	15	2	1	-	1	1	1	-	-	-	73	22	95	
P.C.P.	11	-	-	-	1	-	10	2	-	-	1	-	-	-	-	-	23	2	25	
DEMEROL	1	-	-	-	1	-	1	-	1	-	-	-	-	-	-	-	4	-	4	
MORPHINE	5	-	1	-	1	-	2	-	-	-	-	-	-	-	-	-	9	-	9	
OPIMUM	13	-	-	-	-	-	1	-	-	-	1	-	-	-	-	-	15	-	15	
DILAUDID (E)	2	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	3	-	3	
CODEINE	1	-	1	-	1	-	1	-	-	-	1	-	-	-	-	-	5	-	5	
METHADONE	5	1	-	-	-	-	1	1	-	-	-	-	-	-	-	-	6	2	8	
CONTROLLED DRUGS DROGUES CONTROLEES	36	2	-	-	-	-	6	-	-	-	-	-	-	-	-	-	42	2	44	
DESIGNATED DRUGS DROGUES DESIGNEES	165	34	-	-	-	-	43	12	2	-	-	-	-	-	-	-	210	46	256	
SCHEDULE 'F' DRUGS DROGUES DE LA CEDEULE 'F'	5	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5	2	7	
UNIDENTIFIED DRUGS DROGUES NON IDENTIFIEES	74	9	-	-	-	-	1	-	-	-	-	-	-	-	-	-	75	9	84	
L.B.J.	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	2	
MESCALINE	12	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12	1	13	
TOTAL	1682	274	72	14	30	7	221	35	6	3	20	2	2	2	2	-	2035	335	2370	

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15/3/74

REDIGE PAR: Bureau des drogues dangereuses
Direction Générale de la
Protection de la Santé
Santé et Bien-être Social Canada

DURING 1973, AT LEAST 475 INDIVIDUALS (433 MALES AND 42 FEMALES) WHO WERE PREVIOUSLY KNOWN AS CANNABIS AND/OR SCHEDULE H DRUG USERS, WERE RECORDED AS USERS OF:

EN 1973, 475 INDIVIDUS (433 MALES ET 42 FEMELLES) ETANT CONNUS COMME USAGERS EXCLUSIFS DU CANNABIS ET/OU DES DROGUES DE LA CEDEULE H ONT ETE RELEVES COMME FAISANT USAGE DE:

	M	F	TOTAL
HEROIN(E)	129	12	141
HEROIN(E) & METHADONE	129	22	151
HEROIN & DESIGNATED DRUGS	11	-	11
HEROINE & DROGUES DESIGNÉES	1	-	1
HEROIN(E) & MORPHINE	1	-	1
HEROIN, METHADONE & DESIGNATED DRUGS	1	-	1
HEROINE, METHADONE & DROGUES DESIGNÉES	4	-	4
HEROIN(E) & COCAINE	1	-	1
HEROIN(E), METHADONE, DILAUDID & C./D.	1	-	1
HEROIN(E), METHADONE, DEMEROL & TALWIN	1	-	1
HEROIN(E), METHADONE & P.C.P.	1	-	1
HEROIN(E), METHADONE & COCAINE	1	-	1
HEROIN(E), DEMEROL & LERITINE	1	-	1
METHADONE	10	-	10
DILAUDID (E)	5	-	5
DEMEROL	2	-	2
MORPHINE	2	-	2
COCAINE	34	5	39
OPIUM	6	-	6
P.C.P.	3	-	3
CONTROLLED DRUGS - DROGUES CONTRÔLÉES	7	-	7
DESIGNATED DRUGS - DROGUES DESIGNÉES	84	3	87
TOTAL	433	42	475

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Santé et Bien-être Social Canada

15/3/74

TABLE OF NEW CANNABIS USERS BY MONTHS IN 1973.

RELEVÉ MENSUEL DES NOUVEAUX USAGERS DU CANNABIS EN 1973.

		M	F	TOTAL
JAN. -	JAN.	1968	290	2258
FEB. -	FEV.	1930	308	2238
MARCH -	MARS	2145	301	2446
APRIL -	AVRIL	1993	231	2224
MAY -	MAI	2053	271	2324
JUNE -	JUIN	1910	215	2124
JULY -	JUIL.	2226	274	2500
AUG. -	AOUT	2261	289	2550
SEPT. -	SEPT.	1638	195	1833
OCT. -	OCT.	* 1336	122	1458
NOV. -	NOV.	* 802	83	885
DEC. -	DEC.	* 361	49	410
TOTAL		20623	2628	23251

* Figures for these months are not complete.

* Les résultats pour ces mois sont incomplets.

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15/3/74

RELEVÉ DES CONDAMNATIONS IMPLIQUANT LE CANNABIS
(MARIHUANA & HASHISH) EN 1973

STATEMENT OF CONVICTIONS INVOLVING CANNABIS
(MARIHUANA & HASHISH) IN 1973

PROVINCE	SECTION ARTICLE 3(1)	SECTION ARTICLE 4(1)	SECTION ARTICLE 4(2)	SECTION ARTICLE 5(1)	SECTION ARTICLE 6(1)	TOTAL
Nfld.	210	4	14	1	-	229
P.E.I.	37	5	7	-	-	49
N.S.	500	23	37	2	2	564
N.B.	269	8	18	-	2	297
QUE.	1963	26	170	12	13	2184
ONT.	7182	80	285	9	7	7563
MAN.	606	9	33	-	4	652
SASK.	1108	33	36	2	12	1191
ALTA.	2142	32	98	-	8	2280
B.C.	4409	65	212	1	37	4724
YUKON & N.W.T.	177	14	4	-	1	196
TOTAL	18603	299	914	27	86	19929

Section 3(1) Possession	Section 5(1) Importing	Article 3(1) Possession	Article 5(1) Importation
Section 4(1) Trafficking	Section 6(1) Cultivating	Article 4(1) Traffic	Article 6(1) Culture
Section 4(2) Possession for the purpose of Trafficking		Article 4(2) Possession en vue d'un trafic	

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Santé et Bien-être Social, Canada

15/3/74

AGE GROUP AND SENTENCES AWARDED IN CASES INVOLVING
CANNABIS (MARIHUANA & HASHISH) IN 1973
Section 3(1)

AGE GROUP	FINE ONLY	*PROB. OR S/S	A/D L/I	C/D L/C	**	1 MO. 1MOIS	6 MOS. 6MOIS	1 YR. 1 AN.	2 YRS. 2 ANS.	3 YRS. 3 ANS.	4 YRS. 4 ANS.	5 YRS. 5 ANS.	6 YRS. 6 ANS.	7 YRS. 7 ANS.	8 YRS. 8 ANS.	9 YRS. 9 ANS.	TOTAL
AGE AMENDE SEULE-OU S/MENT						TO/A	TO/A	TO/A	TO/A	TO/A	TO/A	TO/A	TO/A	TO/A	TO/A	TO/A	
UNDER MOIN	1332	598	142	277	44	16	9	1	-	-	-	-	-	-	-	-	2419
18																	
18-20	5408	514	502	794	211	73	21	1	-	-	-	-	-	-	-	-	7524
21-24	4131	284	329	524	177	91	29	8	1	1	-	-	-	-	-	-	5575
25-29	1516	116	124	166	71	31	18	2	1	2	-	-	-	-	-	1	2048
30-34	367	22	35	24	21	9	6	1	1	-	-	-	-	-	-	-	486
35-39	81	6	8	4	3	4	2	-	-	-	-	-	-	-	-	-	108
40-49	48	2	3	3	4	3	1	-	-	-	-	-	-	-	-	-	64
50-59	2	1	1	2	-	-	-	-	-	-	-	-	-	-	-	-	6
60-69	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3
Unknown																	
INCONN	282	36	17	29	5	-	-	1	-	-	-	-	-	-	-	-	370
TOTAL	13170	1579	1161	1823	536	227	86	14	3	3	-	-	-	-	-	1	18603

* Probation or suspended sentence
** A/D Absolute Discharge
*** C/D Conditional Discharge

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* Probation ou sentence suspendue
** L/I Libération inconditionnelle
*** L/C Libération conditionnelle

REDIGÉ PAR: - Bureau des drogues dangereuses
Direction générale de la Protection
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Santé et Bien-être Social, Canada

1975/76

AGE GROUP AND SENTENCES RECORDED IN CASES INVOLVING CANNABIS
(MARIHUANA & HASHISH) IN 1973
Section 4(1)

AGE GROUP	FINE ONLY	*PROB. OR S/S	** A/D L/I	** C/D L/C	1 MO. LMOIS	1 MO. TO/A	6 MOS. TO/A	1 YR. TO/A	2 YRS. TO/A	3 YRS. TO/A	4 YRS. TO/A	5 YRS. TO/A	6 YRS. TO/A	7 YRS. TO/A	8 YRS. TO/A	10 YRS. AND OVER	TOTAL
UNDER 18	4	13	-	-	1	5	1	2	-	-	-	-	-	-	-	-	26
18-20	10	11	-	1	4	33	19	27	-	-	-	-	-	-	-	-	105
21-24	5	3	-	-	9	29	36	26	6	1	-	-	-	-	-	-	115
25-29	-	3	-	-	4	3	12	13	3	-	2	-	-	-	-	-	40
30-34	-	-	-	-	-	2	3	-	-	-	-	-	-	-	-	-	5
35-39	1	-	-	-	-	2	1	1	-	-	-	-	-	-	-	-	5
40-49	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
50-59	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
60-69	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Unknown INCONNU	-	2	-	-	-	-	1	-	-	-	-	-	-	-	-	-	3
TOTAL	20	32	-	1	18	74	73	69	9	1	2	-	-	-	-	-	299

* Probation or suspended sentence
** A/D Absolute Discharge
*** C/D Conditional Discharge

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* Probation ou sentence suspendue
** L/I Libération inconditionnelle
*** L/C Libération conditionnelle

AGE GROUP AND SENTENCES AWARDED IN CASES INVOLVING CANNABIS
(MARIHUANA & HASHISH) IN 1973
Section 4(2)

RELEVÉ DES SENTENCES IMPOSEES DANS LES CAUSES DE CANNABIS
(MARIHUANA & HASHISH) SELON L'AGE EN 1973
Section 4(2)

AGE GROUP ONLY AGE AMENDE SEULE-OU S/S MENT	*PROB. OR S/S PROB. SEULE-OU S/S	** A/D L/I	** C/D L/C	1 MO. 1 MOIS &/ET UNDER MOIN	1 MO. 1 MOIS TO/A 6 MOIS 1 AN.	1 YR. 1 AN. TO/A 2 YRS. 2 ANS.	2 YRS. 2 ANS. TO/A 3 YRS. 3 ANS.	3 YRS. 3 ANS. TO/A 4 YRS. 4 ANS.	4 YRS. 4 ANS. TO/A 5 YRS. 5 ANS.	5 YRS. 5 ANS. TO/A 6 YRS. 6 ANS.	6 YRS. 6 ANS. TO/A 7 YRS. 7 ANS.	7 YRS. 7 ANS. TO/A 8 YRS. 8 ANS.	8 YRS. 8 ANS. TO/A 9 YRS. 9 ANS.	10 YRS. 10 ANS. TO/A 11 YRS. 11 ANS.	TOTAL
UNDER MOIN DE 18	11 28	-	2	6	8	3	2	1	-	-	-	-	-	-	61
18-20	45 34	1	3	33	65	61	32	4	1	1	-	-	-	-	280
21-24	42 22	3	4	37	80	84	56	9	7	2	3	1	-	-	350
25-29	18 8	-	2	10	20	33	25	9	6	3	1	-	-	-	135
30-34	7 2	1	-	1	11	8	10	8	1	-	1	-	-	-	50
35-39	1 -	-	-	1	-	1	1	1	2	-	-	-	-	-	7
40-49	1 -	-	-	1	1	1	-	-	2	-	-	-	-	-	6
50-59	-	-	-	-	-	-	-	-	-	1	-	-	-	-	2
60-69	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Unknown INCONNU	7 -	-	-	3	6	4	3	-	-	-	-	-	-	-	23
TOTAL 132	94	5	11	93	191	195	129	32	19	7	5	1	-	-	914

* Probation or suspended sentence
** A/D Absolute Discharge
*** C/D Conditional Discharge

* Probation ou sentence suspendue
** L/I Libération inconditionnelle
*** L/C Libération conditionnelle

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Health Protection Branch
Health and Welfare Canada

REQUIS PAR: - Bureau des drogues dangereuses
Direction générale de la Protection
de la santé
Santé et Bien-être Social, Canada

SECTION 5(1)

ARTICLE 5(1)

AGE GROUPS AND SENTENCES AWARDED IN CASES INVOLVING CANNABIS
(MARIHUANA & HASHISH) IN 1973.RELEVÉ DES SENTENCES IMPOSEES DANS LES CAUSES DE CANNABIS
(MARIHUANA & HASHISH) SELON L'AGE EN 1973.

AGE GROUP SELON L'AGE	FINE ONLY AMENDE PROB SEULE- OU S/S MENT	*PROB OR S/S L/I L/C	**A/D**C/D	UNDER 1/2 YR MOINS DE 1/2 AN	6 MOS TO/A	1 YR TO/A	2 YRS TO/A	3 YRS TO/A	4 YRS TO/A	5 YRS TO/A	6 YRS TO/A	7 YRS TO/A	8 YRS TO/A	9 YRS TO/A	10 YRS TO/A	15 YRS TO/A	15 YRS AND/ET OVER PLUS	TOTAL
UNDER 18																		
MOINS DE 18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18-20	-	-	-	-	-	-	1	-	-	-	-	3	-	-	-	-	-	4
21-24	-	-	-	-	-	-	-	-	-	-	-	11	-	-	-	-	-	11
25-29	-	-	-	-	-	-	-	-	-	-	-	5	-	-	-	-	-	5
30-34	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	2
35-39	-	-	-	-	-	-	-	-	-	-	-	4	-	-	-	-	-	4
40-49	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
50-59	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
60-69	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
UNKNOWN INCONNU	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	1
TOTAL	-	-	-	-	-	-	1	-	-	-	-	26	-	-	-	-	-	27

**A/D - Absolute Discharge

**C/D - Conditional Discharge

* - Probation or Suspended Sentence

**L/I - Liberation inconditionnelle

**L/C - Liberation conditionnelle

* - Probation ou sentence suspendue

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Direction Générale de la Protection de la Santé
Santé et Bien-être Social Canada

15/3/74

AGE GROUP AND SENTENCES AWARDED IN CASES INVOLVING CANNABIS
(MARIHUANA & HASHISH) IN 1973
Section 6(1)

RELEVÉ DES CONDAMNATIONS ENREGISTRÉES DE 1964 - 1973 INCLUSIVEMENT
IMPLIQUANT LES DROGUES SUIVANTES

STATEMENT SHOWING CONVICTIONS OF THE FOLLOWING DRUGS
FROM 1964 - 1973 INCLUSIVE

YEAR/ANS	CANNABIS	HEROIN(E)	METHADONE	COCAINE	LSD	MDA
1964	28	272	1	-	-	-
1965	60	266	6	3	-	-
1966	144	221	3	1	-	-
1967	586	348	19	-	-	-
1968	1429	279	23	2	-	-
1969	2964	310	15	1	-	-
1970	6270	383	14	12	1558	72
1971	9478	502	82	19	1558	325
1972	11713	923	81	44	1161	534
1973	19929	1290	43	123	970	792

PREPARED BY: Bureau of Dangerous Drugs
Health Protection Branch
Health & Welfare Canada

REDIGÉ PAR: Bureau des drogues dangereuses
Direction générale de la Protection de la Santé
Santé et Bien-être Social Canada



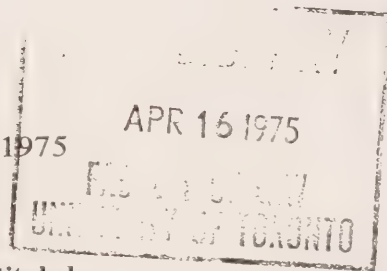
FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 5

TUESDAY, FEBRUARY 11, 1975



Second Proceedings on Bill S-19, intituled:

“An Act to amend the Food and Drugs Act, the
Narcotic Control Act and the Criminal Code”

(Witnesses: See Minutes of Proceedin

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Langlois
Buckwold	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Sullivan
Lang	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

February 11, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:30 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Croll, Fergusson, Flynn, Godfrey, Laird, Langlois, McGrand, Neiman, Perrault, Prowse, Quart and Sullivan. (14)

Present but not of the Committee: The Honourable Senator Petten.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee resumed its examination of Bill S-19 intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code."

The following witnesses, representing the Canadian Medical Association, were heard in explanation of the Bill:

Dr. Bette Stephenson, President;

Dr. Lionel P. Solursh, Chairman,
Canadian Medical Association Committee on the non-medical use of Drugs;

Mr. D. A. Geekie,
Director of Communications;

Dr. J. S. Bennett,
Director of Scientific Councils.

At 12:30 p.m. the Committee adjourned until 2:15 p.m.

— — —

At 2:40 p.m. the Committee resumed.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Croll, Fergusson, Flynn, Godfrey, Laird, Langlois, McGrand, Neiman, Prowse, Quart and Sullivan. (14)

Present but not of the Committee: The Honourable Senator McNamara.

The Committee continued its examination of Bill S-19.

The following witnesses, representing the Canadian Medical Association, were heard:

Dr. Bette Stephenson, President;

Dr. Lionel P. Solursh, Chairman,
Canadian Medical Association Committee on the non-medical use of Drugs;

Mr. D. A. Geekie,
Director of Communications;
Dr. J. S. Bennett,
Director of Scientific Councils.

At 3:50 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, February 11, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 10.30 a.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, the committee will continue its study of Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code. The brief to be presented this morning is on behalf of the Canadian Medical Association. Dr. Bette Stephenson, President of the association, is here to present the brief, and accompanying her is Dr. Lionel P. Solursh, Chairman of the CMA Committee on the Non-Medical Use of Drugs.

I will now call on Dr. Stephenson to present the brief.

Dr. Bette Stephenson (*President, Canadian Medical Association*): Mr. Chairman, honourable senators, it is my privilege this morning to present to your committee the brief of the Canadian Medical Association on Bill S-19.

The Canadian Medical Association welcomes this opportunity to present the following opinions and information related to Bill S-19 on behalf of its 26,000 physician members.

More than seven years ago, on December 6, 1967, members of the medical profession, including a member of this delegation sitting on my right, Dr. Solursh, first recommended to the Standing Senate Committee on Banking, Trade and Commerce that "cannabis compounds, natural and synthetic, including marijuana, hashish and THC" be transferred from the Narcotic Control Act to the Food and Drugs Act. Your colleagues at that time were considering Bill S-21, to amend the Food and Drugs Act. In November, 1969, the association formally submitted a comparable recommendation to the Government of Canada via its interim brief to the Commission Inquiry into the Non-Medical Use of Drugs. The association is pleased, therefore, to see the Parliament of Canada, both here and in the lower house, considering such legislation. It is highly desirable that the legal machinery of this country be granted more discretionary power and that the courts deal with the users of marijuana in a more lenient manner.

As we have stated on several occasions, cannabis is not a narcotic and would be more appropriately controlled under the Food and Drugs Act; the simple possession of a psychoactive drug for personal use should not be punishable by jail sentence. We stress that in our collective medical opinion, definite health hazards accompany the use of cannabis, and the public of Canada should be clearly advised against its use.

However, the association must view with considerable concern the failure of the legislation to eliminate the stigma, the possibility for criminal record. The social and health problems resulting from a criminal record far outweigh the crime of simple possession of cannabis for personal use. We reiterate our opinion, forcefully expressed in the reports of Canada's Le Dain Commission, the United Kingdom Wootton Committee, and the United States National Commission on Marijuana and Drug Abuse 1972, that criminalization frequently produces far more serious, deleterious effects on the user than does the use of cannabis.

The CMA strongly urges that the legislation be amended to avoid the establishment of a criminal record for those found guilty of simple possession of cannabis for personal use. Failing the realization of that objective, and notwithstanding the current provisions of the Criminal Law Amendments Act and the Criminal Records Act, we recommend that provisions be made for the automatic erasure of the criminal record for those found guilty of simple possession for personal use following a two or three year "charge-free probationary period."

For background information we would remind you that *cannabis sativa L.* is a herbaceous plant, which grows wild or can be cultivated in many areas of the world. It is from this plant that marihuana and hashish are obtained. Marihuana is usually a mixture of crushed cannabis leaves, flowers and twigs while hashish is the concentrated resin of the plant. The primary psychoactive constituents are certain forms of tetrahydrocannabinol, generally known as THC.

Cannabis is not grown purely for its pharmacological properties. Its fibres are used in industries—for example, the manufacture of rope, twine, cloth, paper, money—while its seeds produce oil used in paint and soap, as well as being used as food for man, animals and birds. The plant has a recorded history of nearly 6000 years and appears to have been introduced, for commercial purposes, into North America in the early 17th century. Such cultivation in Canada continued until the 1930s, but in 1938 an amendment to the Opium and Narcotic Drug Act banned the cultivation of cannabis without special authorization.

As part of the current "drug scene", cannabis has achieved a fair degree of prominence, and with it a tremendous amount of controversy. Since the early 1960s, a plethora of reports and opinions, both scientific and non-scientific, accompanied by emotional outpourings in many instances, has produced little towards solving the controversy.

In 1969, under an order in council, the Government of Canada set up a Commission of Inquiry into the Non-Medical Use of Drugs, and in 1970 this commission presented an interim report in which cannabis was discussed. In 1972 the commission produced a report devoted entirely to

cannabis; this report had been preceded by two months by a report from the United States National Commission on Marijuana and Drug Abuse, and in 1968 by the report of the Wootton Committee in the United Kingdom.

To identify the problem, as stated earlier, there is an overlying aura of emotion whenever the drug problem is discussed. Most people would agree that not all use of alcohol indicates a problem and that an alcohol problem arises because of excessive use. However, many of those same people would argue that any use of cannabis constitutes a drug problem.

The cannabis problem cannot be viewed in isolation from other drug use. No drug is harmless. The utilization of any drug has to be looked at in terms of dose, potency, frequency of use, physiological response of the recipient. What may be inadequate for one person may be adequate for another. What may be harmless or beneficial to one patient may in similar amounts to harmful to another. This is the perspective in which the non-medical use, abuse or misuse, of drugs must be viewed. To do otherwise inevitably leads to erroneous, invalid comparisons or invalid conclusions, or both.

Basically drug problems have two facets, the social and the medical sides. On the social side, possession, as opposed to use, may bring an individual into conflict with the law, even though the individual's action may not directly affect society. Overuse and misuse, including dependence, of a drug may bring the user into conflict with the law because of the direct, and sometimes the indirect, effect on society. The medical problems arise when abuse or misuse directly affects the health of the user.

The solutions to the two facets are not the same. The medical side has to be resolved by careful, well recognized scientific study, with proven scientific answers to the questions raised. The social problem does not depend on scientific conclusions alone for a solution, but has to be resolved by an interaction involving value judgments, viable alternatives, education and the active involvement of government and private agencies.

The difficulties encountered in reaching acceptable conclusions may be seen in both the Canadian and the United States commission reports. In both there was a lack of unanimity on how best to handle the situation. For example, four of five members of the Le Dain commission recommended the repeal of the prohibition against simple possession of cannabis. Eleven of thirteen members of the United States commission recommended that:

—possession of marijuana for personal use no longer be considered an offense.

The Wootton Committee recommended a substantial reduction in penalties for its use:

Possession of a small amount of cannabis should not normally be regarded as a serious crime to be punished by imprisonment.

Under the Misuse of Drugs Act, 1971, which came into force July 1, 1973, cannabis and cannabis resin fall into category B; that is, illegal possession of substances in this category may on indictment lead to a maximum penalty of five years' imprisonment or a fine, or both. Quantities are not specified in the act. Cannabinol, except when contained in cannabis or its resin, falls into category A; that is, indictment for its unlawful possession may lead to a maximum seven years' imprisonment or a fine, or both. However, there are provisions for dealing with offenders sum-

marily, and the penalties are much less severe than for offences tried on indictment.

In November, 1969, the CMA submitted its interim brief to the Le Dain Commission, stating:

The medical profession, like most segments of society, has been extremely conscious of the rapid increase in utilization of the various forms of *cannabis sativa*. This, the most extensively used drug among our youth and young adult drug users, has been as much a centre of intense controversy and contradictory reports within the profession as it has been for the general public.

The CMA went on to urge that decisions not be based on "inadequate scientific evidence."

In its brief, the association asked that marihuana be regulated under the appropriate schedule of the Food and Drugs Act rather than under the Narcotic Control Act. The brief commented also on the:

harmful effects of police apprehension, conviction and its resultant criminal record and incarceration with hardened criminals of the youthful marijuana user.

The association continued to discuss the question of non-medical drug usage, and in 1971 presented a further brief to the Le Dain Commission. Among the seventeen recommendations were the following:

- i) That simple possession of any psychoactive drug should not be punishable by a jail sentence.
- ii) That legislation be enacted to provide for the destruction of all records of a criminal conviction after a reasonable period of time.
- iii) That the legal definitions of "trafficking" and "possession for the purpose of trafficking" be reviewed and clarified.
- iv) That control of psychedelic drugs, cannabis products and similar substances and the legal machinery for dealing with users be health oriented, i.e. the Food and Drugs Act as opposed to the Narcotic Control Act, pending review of the current pertinent legislation.

In its reaction to the Final Report of the Le Dain commission, the association noted with approval that the commission had recognized the non-medical aspects of the problems of non-medical drug use. The association reiterated its policy on the need for "decriminalization of those convicted for simple possession of cannabis" and called upon the Department of Justice "to undertake the job of clarifying the definitions of simple possession, drug trafficking and reviewing the whole range of penalties for drug trafficking".

The CMA's interpretation of "decriminalization" and "use" are as presented to the 1974 annual meeting of the general council of the association in keeping with the recommendations of a CMA-Canadian Bar Association joint committee, and they are these:

"decriminalization is the concept referred to in both the US and Canadian drug commission reports, i.e. 'criminal' means an act included in the Criminal Code of Canada, whether the offence be prosecutable or prosecuted by the summary route or by indictment, and as such 'decriminalization' is the removal of such offence from the code."

With respect to the "use of drugs" we believe it should be defined as the presence of a drug within the body, rather than defined in terms of anecdotal reports of an individual

who has taken a drug; "use of drugs" *per se* should not be a criminal offence. In those cases where use is associated with, or leads to, activities which contravene existing civil or criminal law, the appropriate existing laws should apply.

I should like to remind you that during the past three years the Canadian Medical Association has done four things consistently: first, it has firmly opposed any move towards legalization of cannabis and its products; second, it has indicated the need for further scientific research on cannabis; third, it has recommended that the general public be made aware of the potential hazards involved in the use of cannabis; and, fourth, it has consistently supported the concept of decriminalization for simple possession offences.

Within current medical thinking, there is an increasing body of evidence that marihuana may not be the relatively harmless substance it was thought to be, and scientific observations over the past five years have suggested that there are definite hazards in its use. The evidence indicates the effects of marihuana are dose-related and cumulative; at least six different potential hazards have been pinpointed. These are: first, irreversible brain damage; second, personality changes; third, damage to respiratory system; fourth, interference with hormonal production; fifth, disruption of cellular metabolism; and, sixth, chromosomal damage.

These potential hazards have been determined primarily from the clinical experience of physicians. Therefore, these observations are less reliable than results obtained in controlled clinical trials where the subject's drug use can be monitored carefully. Because of this, the controversy which surrounds the degree of hazard resulting from casual cannabis use will not be soon resolved.

While some clinical trials have been held to determine effects of cannabis, the results have not produced clear answers. Some of the findings have not in fact been replicated in similar trials.

But in the area of chromosome damage, examination at the University of Utah School of Medicine and at New York University School of Medicine demonstrated chromosomal abnormalities in the long-term user, but not in the casual user. However, contradictory evidence comes from the New Jersey Institute for Medical Research where subjects given cannabis under controlled conditions showed no chromosomal damage abnormalities.

With respect to disruption of cellular metabolism, there appears to be agreement among some researchers that extended exposure to cannabis interferes with the synthesis of deoxyribonucleic acid (DNA). The long-term use lowers the immune responsiveness and thus would make the user more susceptible to disease. It is believed that it is the non-psychoactive components, i.e. cannabidiol and cannabidiol, which are more effective than THC in the depression of DNA synthesis.

Work at the University of Toronto has shown that THC has a marked depressive effect on the synthesis of ribonucleic acid and work at the Mason Research Institute, Worcester, Mass. has shown that THC, given in high doses to experimental animals, produces changes in brain tissue.

Regarding hormonal changes, studies at the Reproductive Biology Research Foundation, St. Louis, showed that 20 young men who had used cannabis at least four times a week for six months or longer had lower than normal blood testosterone levels. Another effect attributed to cannabis

use is gynecomastia—production of female-like breasts in males.

Regarding damage to respiratory system, marihuana cigarettes contain about 50% more tar than commercial cigarettes, and this marihuana tar has produced skin tumours on mice. Bronchial biopsies on young US soldiers who smoked hashish showed a high percentage of pre-malignant or early-malignant lesions. Work at the University of Oxford shows an increasing incidence of emphysema among young smokers of cannabis, a finding consistent with findings in ganja smokers.

However, it must be stated that most cannabis smokers also smoke tobacco and the latter may predispose the bronchial tissue to pathological changes. Tobacco, however, is usually selectively bred for its mildness, and there are attempts to keep the tar content to low levels with cigarettes. No such attempts have been made with cannabis, and sometimes tar content has been found to be 50% higher than tobacco tar content; therefore, cannabis by itself may contribute significantly to lung irritation.

In the area of brain damage and personality changes, to produce its psychedelic effect, cannabis must have at least some specific action on the central nervous system. THC has a very high affinity for brain tissue, and with repeated doses, there is a build up; traces may be found for varying periods after the administration of cannabis is discontinued.

It is believed that the continued presence of THC in brain tissue leads to a syndrome which has been described as "amotivational". That is the subjects show apathy, sluggishness, flattening of affect, lack of goals and loss of interest in personal appearance.

However, there is still disagreement over the link between heavy, prolonged use of cannabis and brain damage, and much more research will be needed before answers are forthcoming.

In summary, in looking at the proposals outlined in Bill S-19, the CMA is pleased to see that cannabis will be placed under the Food and Drugs Act, that the legal machinery is given greater discretion and that the courts have direction to deal with minor offenders in a more lenient manner.

However, the association must strongly disagree with the retention of the criminalization which may result from simple possession and reiterates its opinion, expressed in the reports from Canada, the United Kingdom and the United States of America, that the criminalization frequently produces far more serious, deleterious effects on the user than the original use of cannabis.

The CMA is not concerned only about the social implications of the criminal appellation. It is obvious that such a label may have a direct bearing on the total health of the individual, and the association asks that simple possession, not for the purposes of trafficking, be considered a non-criminal offence.

The association does not, I repeat, recommend "legalization". It has asked for review and clarification of "trafficking" and "possession for the purpose of trafficking". These are matters for consideration by those with legal expertise. Even allowing for the provisions of the Criminal Law Amendments Act and the Criminal Records Act, the association believes most strongly that removal of the appropriate section of the Criminal Code is the most appropriate and logical step at this time. We urge the Parliament of

Canada to study the experience of New Zealand and the state of Oregon in the United States, relative to this subject.

The Chairman: Thank you very much, Dr. Stephenson. Does Dr. Solursh want to add something at this time, or shall we proceed with questions from the committee?

Dr. Lionel P. Solursh, Chairman, Canadian Medical Association Committee on the Non-Medical use of Drugs: Please proceed, Mr. Chairman.

Dr. Stephenson: Mr. Chairman, could we at this time introduce the other members of the delegation to the committee?

The Chairman: Yes, Dr. Stephenson, please do.

Dr. Stephenson: The other members of the delegation from the Canadian Medical Association are; Dr. Chesney, from Montreal the President of the Quebec Medical Association; Dr. John Bennett, Director of Scientific Councils of the Canadian Medical Association; Dr. N. P. Da Sylva, Director of Medical Services and our French-language speaking Secretariat member, and Mr. D. A. Geekie, who is Director of Communications for the Canadian Medical Association.

Senator Buckwold: Dr. Stephenson, first I have to apologize for the fact that I am chairman of a committee that will be meeting at 11 o'clock, so my question will be brief, and I will run immediately afterwards, not because of the answer, but because of the other engagement.

The thing that is worrying me is the lumping together of marihuana and hashish. Your brief indicates that the dosage becomes a problem, and does create some deleterious effects. You have asked us to look at the state of Oregon, and I am not sure of this, but I understand that they have made a distinction between hashish and marihuana, and I would like to get your opinion as to the differences between these two substances. They are the same drug, but I would like to hear what you have to say about the kind of dosage, the effects of the dosage, and whether in fact we should differentiate in our legal machinery between these two dosages.

Dr. Stephenson: Senator, could I ask our expert in this area, Dr. Solursh, to define for the senators the dose differences between hashish and marihuana?

Dr. Solursh: Senator, if I may be excused a parallel with alcohol, there is a parallel between beer, wine and, for example, some 151-proof rum that I have at home, which you are welcome to come over and share—

Senator Buckwold: Don't make that a general invitation.

Dr. Solursh: But the parallel is relevant in the sense that people who use any of the psychoactive drugs do titrate them against their effect on themselves, either desirable or undesirable. The combination of crushed leaves, stems, twigs and flowers of the top of the female plant is called grass, or marihuana, and in Canada it is usually between one and three per cent delta nine tetrahydrocannabinol. It may go as high as five per cent from the West Indies, or several other places. In comparison, hashish varies—it may be 10, 12, 14 or 15 per cent—but broadly speaking hashish is four, six, eight, times as potent, which I think is the question you have raised; but because of the manner of the usage, again, if I may be permitted that parallel, we think

the same issues apply, even if one is more potent than the other, and in our deliberations our council, in dealing with this, has dealt with cannabis and its various forms as one issue rather than taking each form of the substance separately, and, for example, talking about up to five per cent, between five and seven, seven and 10, 10 and 15, and so on, as one would otherwise have to do.

Senator Buckwold: Right. Now, we were told earlier that there is a growing use of hashish, as against grass, as it is referred to. In other words, the kids, or whoever is using it, are moving into stronger dosages. By the very same token that I suppose in some jurisdictions there is a difference between beer and your rum, are you prepared to ignore this in your recommendations to us, and could you refer to the Oregon legislation and perhaps give us your opinion as to why they have differentiated?

Dr. Stephenson: If I may say so, I do not think we are ignoring the fact that they really are the same root—the same material—in different strengths; but in fact, all of our recommendations are based on the entire area, or the entire product, rather than all of the products being considered one specific substance, and therefore to be dealt with, probably, in the same way. Children or young people do advance from beer, perhaps, at an early age, or wine, in France, for example, to other, much stronger, alcohols, and the same sorts of safeguards, I think, have to be presented in order to make them wiser in the use of those things. That really is what we are saying about anything which contains THC.

Senator Buckwold: You are really evading the basis on which I am asking you the question, and that is, should there be some differentiation between the two dosages? I am more and more inclined to be very concerned that as the thing develops, users will move into hash as it becomes more available, with much more serious results.

Some of us are prepared to look favourably on your recommendations in the lower dosage portions, but we are worried about the use of hash. I do not think you have answered the question.

Dr. Solursh: For two particular reasons we have put these together in concept. One reason is because the potencies overlap. You might actually legislate a separate set of regulations for marihuana, but which may be more potent than some of the hash; so it is in fact legislatively impractical. The second reason that we have lumped them together is because the manner of use is such that although there are criminal advantages in transportation to utilizing more potent substances, the over-all form of social use takes into account the relative potency. Our concern is very largely with misuse, and with attempting to retain a perspective on misuse as opposed to use of all psychoactive substances; so we have not draw a distinction.

Senator Buckwold: Unfortunately, I have to move on, but perhaps somebody else might ask how Oregon is handling this.

Senator Laird: There is another big problem that is worrying a lot of us. First of all, let me say that it is impossible to quarrel with your brief as far as I am concerned, except on one point, and that is the removal of mere possession as an offence entirely. Now, since you have raised the social aspect, would it not likely have the psychological effect on young people of thinking that in fact we were legitimizing marihuana?

Dr. Stephenson: If I may, Mr. Chairman, the Canadian Medical Association has not stated that simply possession should not be considered an offence. What we have said is that it should not be considered an offence under the Criminal Code.

Senator Laird: But, you see, it does not really matter what act it is under; the offence can either be there or it can be eliminated.

Dr. Stephenson: But an offence under the Food and Drugs Act would probably not necessarily involve a criminal record for the individual.

Senator Croll: That is correct.

Senator Laird: That is what we are aiming at.

Dr. Stephenson : And that is what we are aiming at, senator.

Senator Laird: Then do you really think that if this bill is passed, that that is the best way to deal with the problem? Because even now you will find people saying, as they have said to me, "What are you people proposing down there? Are you proposing to legalize marihuana?" So, therefore, is this the right way to go at it?

Dr. Stephenson: Well, Mr. Chairman, the material would still be controlled under a federal government act and could be utilized only under the provisions of that act.

Senator Prowse: Where would they get it?

Dr. Stephenson: I guess where they get it now.

Senator Sullivan: Mr. Chairman, may I ask if Dr. Solursh is going to present a brief, because, if so, then we could get on with the questioning. I say that because we have here a man who is outstanding in this field in this country and on this continent. We could go ahead with a great deal of questioning which might not arise from Dr. Stephenson's remarks.

The Chairman: I do not think that Dr. Solursh has a brief of his own, but he is prepared to answer questions. Am I right, Dr. Solursh?

Dr. Solursh: Thank you for the compliment, senator. I am appearing strictly as a member of the Medical Association delegation, Mr. Chairman, and at the request of our leader I shall attempt to be involved. We are in complete agreement, however, and I would not be presenting anything else.

Senator Croll: Yes, but what Senator Sullivan is saying is simply to ask if you have something to add to what Dr. Stephenson has said?

Senator Godfrey: He was asked that question earlier and he said no.

Senator Croll: No, he did not say no. He said he was not doing it now.

Senator Godfrey: Well, I think we should permit a witness to answer a question before being interrupted by another senator.

Senator Croll: That is not the custom around here.

Senator Godfrey: I think that the witness should be allowed at least to finish a sentence. As a new senator I suggest that this should be the case.

The Chairman: Dr. Stephenson says she has almost finished, so we will let her complete her answer.

Dr. Stephenson: The question was, of course, how do you control this without letting the public believe that we have recommended legalization. As I said, the material would still be under the control of a federal government act and the expertise of our colleagues in the legal profession I think should be exercised in this area. The decision should be made by government on the basis of that kind of expert information.

Dr. Solursh: Just a comment on that, Mr. Chairman, if one reduces the criminal stigma or the degree of controlling legislation for possession, there is no question that some people who are now fence-sitting will try the drugs. I think it is unavoidable to conclude that. I think one may assume, although there is no way of proving this, that the number of misusers will be proportionately smaller than the current number of misusers because on a self-selective basis many are already involved. But there probably would be some increase, and this is not to be ignored. But if one looks, for example, at the American or Canadian national reports where they recommended that these be not criminal offences and that they be removed from the Code and not be punishable offences or, as it is put in the American report where it is suggested that cannabis be considered as contraband and seized in public—what we find is that neither report recommends, and we do not recommend ourselves, a structured process for distribution. I recognize, senator, the potential inconsistency in this, and indeed, whatever position one takes on this subject it would be criticizable, as our position is criticizable and we know it. However, there are other risks involved in creating a recognized and legalized structure which we are not prepared to recommend or to accept as an association. So if you were to ask if this would increase the usage somewhat, then I think we must agree that it would. But we would hope that the increase would not be great. Does this create an inconsistency then as to where one may obtain it? Yes, it does. There is no way of denying that. Are we prepared to are we prepared to pay the price that China was prepared to pay where the use of opium was concerned? There they simply announced that after one year everybody who was smoking it would simply be decapitated—and they just lopped off head and left them lying around beside the train stations. In our view we are not prepared to pay either extreme price.

Senator Laird: As a supplementary to that, do you consider that alcohol now, in some instances, is becoming a greater menace than marihuana?

Dr. Solursh: Very much so. That is well documented. The more one speaks with people concerned with this situation, the more one becomes aware of the amount of, and here I specifically use the term alcohol misuse in the same context. We have made the statement on page 6 of the brief that the most extensively used drug among our youth is, of course, alcohol, and not cannabis.

Senator Laird: As a matter of fact, it might be of interest to you to know that just as lately as yesterday I was speaking to the president of a university who told me that the problem with respect to marihuana had decreased considerably but that the problem with alcohol had increased with the lowering of the age limit at which it can be purchased.

Dr. Solursh: If I may be permitted a facetious remark, the Ontario government's policy of "from grass to the glass" has been successful, and the Addiction Research Foundation has published documentary evidence to show a markedly disproportionate rise in the number of motor vehicle accidents involved with alcohol and young people. This I think we would all consider misuse.

Senator Laird: Do you agree with Le Dain that at the present time the alcohol problem is a much greater problem?

Dr. Stephenson: Yes, and we have said so in our response to the Le Dain Commission on each occasion.

Senator Croll: This problem is a social problem, a medical problem and a legal problem and, of course, you are not concerned with the legal part, and the suggestion you made is acceptable, I am sure, to everybody here with respect to the record. But that is not the problem. There are two things that trouble me at the moment. Seven years ago the Medical Association came here and made recommendations, according to your brief. As a matter of fact, I was here to hear them. But things have changed in seven years, particularly in the medical world. Now you come here and make the same recommendation today. Are you people making progress? I ask this question because you have turned down the suggestion of legalization and yet Sweden and Britain have had some success. My first question is this; what has happened in those seven years? Is it the same problem as it was seven years ago? Has there been nothing new at all from the medical point of view? If that is the case, then it is the only area of the medical scheme that has not progressed.

Dr. Stephenson: Mr. Chairman, I would have to say that things have changed in seven years. The problem of marihuana, per se, has become perhaps a little bit blurred in the other problems of drug misuse which have, in fact, raised their heads. It is certainly not as emotional an issue as it has been in the past for many years. However, in fact, sir, our special committee on the misuse of drugs has been examining the problem of marihuana in addition to the problems of misuse of other drugs for the past five years very carefully, very consistently and continuously. Their recommendations to the General Council of the Canadian Medical Association are those which appear in our brief.

We have not changed our minds as to the problem of legalization. We do not believe at this time, until there is much more scientific information relating to the effects of marihuana, about the effects of the actual principles of marihuana, that legalization should be considered in any way.

Perhaps we have not made progress; I am not sure what you consider to be progress. We have made progress in the collection and collation of some information regarding the physiological and cellular effects of marihuana, TCH. We believe that we do not have enough of that information at this time to propose to anyone that the substance should be in fact legalized.

Senator Croll: But what information have they in Britain, or in Sweden, that you do not have or which is not available to you and, perhaps, what is the reason why you do not accept it? I do not understand it, but your staff should.

Dr. Stephenson: I do not think they have any information which is not available to us.

Mr. D. A. Geekie, Director of Communications, Canadian Medical Association: Neither the British Medical Association nor the Swedish Medical Association have supported the legalization of cannabis products. Therefore, there is no major conflict in the position of the three countries. You are quite right, sir, that the profession has not made much progress in convincing that other place to change the legislation and the control. We hope, sir, that, it having been brought before you, progress will be a little speedier than it has been during the past five years.

The basic recommendation of the association is to transfer control because of the psychological connotation of its being under the Narcotic Control Act. It is not a narcotic and therefore is in the wrong classification. We have got nowhere.

The other comment I would like to add, in response to Senator Buckwold's question with regard to Oregon, is that he is quite right. The Oregon legislation does pronounce on the THC content. That is, control mechanisms between marihuana, hashish and cannabis oil. In fact, it is one of the major areas of the controversy and unhappiness with the legislation in Oregon at the present time. They find themselves in the position of playing what we call the numbers game in trying to measure the THC content in a product which looks very similar and, if it is 4.5, that is one thing, if it is 5.2, that is another thing, which really does not stand up to much rational thinking.

Senator Croll: Forgetting for the moment New Zealand, which is an agricultural economy and quite different, in my opinion, from ours, let us deal with Oregon. The toughest laws in America with respect to pot and drugs today are in New York State. Oregon is by itself, in that its approach has been adopted with respect to the very serious problem in California and some of the other states.

Dr. Stephenson: Senator, I would not presume to tell you why the Province of Manitoba does not do what is done by the Province of Ontario, in Canada.

Senator Croll: No, but what they do with respect to medical matters is about the same thing.

Dr. Stephenson: Not necessarily, sir.

Senator Croll: Well, it is almost entirely the same thing, not much difference, some slight difference, but here is a very serious problem in the United States, forgetting Canada for the moment. I have heard reports and heard people talking of the great things which are happening in Oregon, which I accept for the moment. How is it that the other states are unable to see that merit in it and do not pick up from Oregon?

Dr. Solursh: May I say, Mr. Chairman, that a competent sociologist or political scientist could answer that better. However, we are aware in this country of differing bodies of opinion, for instance on the West Coast, the East Coast and, perhaps, Central Canada, which are largely sociological, yet are reflected by our own profession because they grow up and work in those areas and are not purely a matter of logic or medical knowledge.

Now, by the same token, politicians are subject to sociological realities and in the United States, as you are aware, criminal law is in great part a prerogative of individual states. I do not anticipate, therefore, that all states would move in the same direction at the same time. I would, frankly, be astonished if this were to take place. However,

obviously the other states, to my knowledge, are looking at what is happening in New York, Vermont and Oregon.

I would not anticipate, though, and I am sure you would not either, with due respect, senator, that they would all move in the same direction at the same time with respect to criminal law.

Senator Croll: But Oregon has had this for two years, has it not?

Mr. Geekie: It is one year, senator; just over one year.

Senator Croll: So you suggest they have not caught on to it?

Dr. Solursh: I suggest they are endeavouring to learn from it and we are also trying to learn from what happens in these different states as they introduce various types of legislation.

The Chairman: Senator Croll, I have a newspaper clipping, from which I will read. It is from the *Montreal Gazette* of November 26, 1974 and the report reads as follows:

The National Organization for the Reform of Marihuana Laws, the pot smokers lobby in Washington, reports that Colorado, California, New Jersey, Massachusetts, Minnesota and Vermont are close behind the "enlightened" view of Oregon.

Senator Croll: Are close?

The Chairman: Close behind the enlightened view of Oregon.

Mr. Geekie: As a supplementary, having commented on that, I think I can speak for our chairman in saying that we are not in a position to recommend to you that you should follow, verbatim as it were, the example of Oregon. However, we have received very favourable reports from the profession in Oregon and we just commend to you, sir, that you study, or have the means at your disposal to study the effects in Oregon. That is the extent of our comment.

Senator Croll: Did you say that was from the *Montreal Gazette*?

The Chairman: It is from the *Montreal Gazette* of November 26, 1974.

Senator Croll: With New York having the toughest laws in the whole of North America, do you see how far that paper is behind the times?

The Chairman: It does not mention New York.

Senator Croll: I thought you said New York?

The Chairman: No. Colorado, California, New Jersey, Massachusetts, Minnesota and Vermont.

Senator Croll: Well, I take that back.

Senator Flynn: Mr. Chairman, I wish to continue the discussion of the question of legalization because, in my opinion, it is at the root of the problem. The conclusion of the brief indicates that the association does not recommend legalization but asks for review and clarification of trafficking and possession for purposes of trafficking.

My reading of the brief indicates that when you speak of legalization you are thinking only of trafficking. Yet it seems to me that you hesitate to make simple possession

for personal use an offence. At the beginning of your brief you say only this: "... the simple possession of a psychoactive drug for personal use should not be punishable by jail sentence." This is negative; you do not say that it should be punishable by fine. It seems to me that all through your brief you do not consider legalization implies simple possession for personal use. That is the first question that I would like to put to you. Are you very definite that it should be an offence?

Dr. Stephenson: Mr. Chairman, we have stated specifically that with the transfer of the control of marihuana and hashish from the Criminal Code to the Food and Drugs Act, we would expect that there would be some regulatory legislative control of the material. What we are suggesting is that simple possession not be a criminal offence under the Criminal Code.

Senator Prowse: It is not.

Senator Flynn: You state it should be an offence. You are not going as far as to say that simple possession for personal use should not be punishable?

Dr. Stephenson: Should not be punishable by a jail sentence—yes. Sir, we are physicians; we are not, in fact, legal experts. It is up to the law makers of this country to decide precisely where this legislation should be and precisely how it should be managed and facilitated. We can make specific suggestions about things we think should not happen to those people, particularly young people, found possessing marihuana, because of our concern about the future emotional and mental health of the individual who is labelled for very minor reasons with a criminal record which stays with him for the rest of his life, no matter how well you manage to amend the Criminal Code and the act. But we are concerned that our views regarding the health hazards, the emotional hazards of criminalization, the continued research which needs to be done in order to find out precisely what this substance does, are things which we think you should be aware of.

Senator Flynn: Would you hold the same views if there were a solution to the production of cannabis in a form which would be proven not to be too harmful? I refer to your brief where you speak about tobacco and say that it is not produced to keep the tar content at low levels. You go on to say, "No such attempts have been made with cannabis, and sometimes tar content has been found to be 50 per cent higher than tobacco tar content; therefore, cannabis by itself may contribute significantly to lung irritation." I understand that tar is not the only problem in Canada. If the production of cannabis were controlled and you could find a formula which would be proven to be not harmful, or not more harmful than cigarette tobacco or alcohol, would you hold the same view that simple possession should be an offence?

Dr. Stephen: Mr. Chairman and honourable senator, I must tell you that at the present time we do not know of even the short-term effects of cannabis, let alone the long-term effects. Simple possession should be made a non-criminal offence.

Dr. Solursh: You will note on page 7, senator, that we have referred to decriminalization as a concept. I stress the word "concept." We refer to both the United States and Canadian drug commission reports. On page 5 we point out that the Le Dain report recommends the repeal of the prohibition against simple possession of cannabis and that the American report recommends that possession of

marihuana for personal use no longer be considered an offence.

We are in agreement with the concept. We have not tried to recommend a specific legislative construct, however, because we feel that is beyond our expertise. However, we point these things out to you conceptually and put it in your ball park where it more properly belongs.

However, our hesitation is about—and this is more to your question—what we have called legalization, which to us means a complete structure for distribution and possession, perhaps along models such as alcohol and tobacco products. Those are examples of legalized structures. We are hesitant about it for two reasons. One, as the honourable senator pointed out before, this would definitely give rise to very widespread acceptance of the use of the drug and apparent permissiveness on the part of our legislators towards its use. Secondly, and more important—I speak now for the committee in particular. This is what was behind our saying this in the first place—it would create a vested interest industry, be it public or personal, which would make it very difficult to turn back the clock if, as further information develops, we wished to do so.

So our recommendation to council—and I believe they accepted it when they accepted our notion of not promoting legalization—was let us keep our options open; let us not create such an establishment that we fall into the same traps as we have with alcohol. Let us recognize that there is sufficiently widespread use—and kalant has quoted a million regular users in Canada—that current punitive legislation for possession is out of line.

I grant you, senator, that is walking a very fine line, but we cannot do more than conceptualize for you and give you our reasons for it. The specific legal constructs are beyond our own expertise. Does that answer your question, senator?

Senator Flynn: I guess it does. I have proved my point, that you are not entirely convinced as to the attitude you should take on simple possession.

Dr. Stephenson: Except that it should not be a criminal offence.

Senator Flynn: We are all in agreement with that.

Senator Laird: Perhaps we should wait for 50 years.

Senator Neiman: Perhaps I can help the committee with a couple of points of information. We are hopeful that we will have some testimony from some of the people in Oregon. We are in touch with them and hope that we shall have some direct evidence of the experience which they are having and have had. Incidentally, that started in Oregon in October 1973. So they have had a little over one year's experience. It is now verified that we shall have as one of our witnesses Dr. Thomas Bryant who is chairman of the Advisory Committee on Drug Abuse to the President of the United States. He will be coming here in a few weeks.

I spoke to him last week. While I was speaking to him he mentioned that he was leaving this week to testify in Nevada and in one other state. I cannot remember the other state at the moment, but they are about to try immediately something very similar to the Oregon experience. He also said that California expects to try to move in this area of decriminalization within the next three of four months. He said that just as he was speaking to me there had been an announcement by the new Governor of the

State of New York that he was setting up a committee and they were moving immediately in this direction.

So there are several states that are now at least actively contemplating moving in this direction. I may say, on behalf of our witnesses today, that we should not look to them to make any changes in our laws or our attitudes towards drugs. They stated their position quite clearly to this house and to a committee of the Senate some years ago. It is really the government that has not made the move as far as we are concerned. Hopefully, we are now moving in the right direction and we will make some progress.

May I then say that I am still concerned as to whether there could be a difference between marihuana and hashish. I am anxious to hear from the Oregon group as to the problems they have with respect to this point. Perhaps it is because I do not know enough about it, but I thought it was quite easy to distinguish between the two types. We had a demonstration of various kinds of marihuana and hashish, and I understood that hashish was mostly in liquid form. I understand now that that is not so; that it can come in large blocks.

To go on from that, perhaps you can tell me, in terms of potency, what we know about the Oregon experience. I think the law in Oregon now, if I am not mistaken, is that simple possession is one ounce or less of marihuana. How would you correlate that to one ounce of hashish, or would you put it on the same basis? Hashish is far more potent, is it not—five, ten times more potent? I am wondering whether legislators or the legal eagles could not come up with some definition that could allow us to do something about the marihuana problem while keeping tighter controls on hashish.

Dr. Solursh: One can distinguish physically between marihuana and hashish by appearance quite readily. As we have said, the crushed tops of the flowering plant of the female cannabis sativa is, in appearance, quite different from the scraped off resin which comes, very often, in block form.

I am sure most honourable senators have now seen it and realize the difference in physical appearance. There is a usual difference in potency, as you point out, and it varies. I suggest that a common difference would be, perhaps, 2 or 3 per cent the strength for cannabis in the form of marihuana and perhaps around 10 per cent in the form of hashish. What I said before, unfortunately, is still true, that being that there is an overlap. In other words, very potent marihuana may be more potent than weak hashish. The question then arises—and I do not believe that we, as an association, can decide on it ourselves other than what we have said to you—does one wish to play the numbers game? There is obviously a certain kind of legal merit in it, though it is artificial. For example, the United States National Commission recommended that one ounce or less of marihuana be considered no longer an offence, but could be subject to civil seizure, if you like, if found in a public place. That commission picked one ounce because it is an enforceable number.

One can argue—and I would be prepared to so argue—as to how realistic it is or is not. Their purpose in setting the number at one ounce was to avoid what many of you are aware now goes on in our courts, that being the necessity of bringing in a lineup of expert witnesses who troop in and say, "Yes, it could have been for personal use," or, "No, it would not likely have been for personal use," and so on.

Whether our legislators, including yourselves, wish to play the numbers game, I do not know, nor do we have a recommendation in that respect, but they have done so in Oregon and the United States National Commission had made such a recommendation. We tend to put cannabis products together for practical purposes.

Senator Laird: Does that include hashish oil?

Dr. Solursh: Yes, senator.

The Chairman: Senator Sullivan.

Senator Sullivan: Mr. Chairman, before I am accused of joining a mutual admiration society, I have two questions I should like to ask. I studied this brief quite thoroughly over the weekend and I should like to put some of the comments I made on the record and, hopefully, get some answers.

The Canadian Medical Association has defined the use of drugs as the presence of a drug or drugs within the body. This involves a different concept than the current application of use. Does the Canadian Medical Association recommend that its definition of use be put forward as an amendment and, if so, does the association foresee problems in the implementation of such a definition?

Dr. Stephenson: We have not put forth or suggested an amendment on the basis of use of the drug. We have used only that terminology which is presently embodied in the law, which is possession for personal use or simple possession, as we have defined it. Use is yet another concept, and I am not sure whether we should muddy the already not too clear water with that kind of extra definition. It would be difficult, I think, to really delineate carefully, for legal purposes, a definition of that type at this stage of the game.

Would you like to add something to that, Dr. Solursh?

Dr. Solursh: If I may say, Senator Sullivan, we have put in a definition of use because our joint Canadian Bar Association-Canadian Medical Association committee advised us in that respect. However, we have said before, as an association, that offences regarding psychoactive drugs should not be increased or broadened, and we are not recommending that use be an offence. Is it not currently an offence; possession is, but use is not. We are not recommending that use be an offence.

Senator Sullivan: My second question is that in view of the new cannabis product—that is, the hashish oil—does the Canadian Medical Association believe that simple possession of this substance should be regarded in the same light as simple possession of other cannabis products?

Dr. Stephenson: In our present state of knowledge, yes, we believe it should be regarded in the same light.

Dr. Solursh: To again add a perspective, Mr. Chairman, we have talked about 14 or 15 per cent delta 9 concentration of hashish. Hashish oil, as I am sure you have been informed, is an extract with various solvents, and then the extract is blown off and one is left with a sort of red oily concentrate of hash, and in that instance the percentage may go as 50 per cent. We are not unaware of the wide difference between those two strengths. That has been considered, and we draw to your attention that it exists.

In the current form of use, hash oil is added to marihuana to increase its strength, so that one winds up, in effect, with something like hashish. We have considered, in terms

of use and in terms of the general basic nature of these substances, that all products, whether pure delta 9 tetrahydrocannabinol hashish oil, hashish, or marihuana, be considered, for practical purposes, in the same legislative light. We have distinguished amongst them, but have not recommended legislative distinction.

Senator Laird: They are really all in the same league.

Dr. Solursh: They are in the same league, senator. I would draw your attention to one other thing which we have said. If we have one contribution to make, it is to attempt to maintain a cool perspective on the subject. We have drawn to your attention some factors which are involved with the effect of drugs, and I would add to those that the psychosocial setting influences how the drug is used or misused and what effects it has. By the same token, it is not simply a question of concentration. If we can retain a perspective on that, then, yes, for practical purposes we are dealing with the same active ingredients. To us it does not seem appropriate to separate off every individual form. In our perspective we are dealing, essentially, with the same substances, although the concentrations differ. The dose intake may be heightened by individual psychic responses, how the individual feels about it, and our concern, frankly, both socially and medically—and they overlap—is with misuse.

One other perspective, if I may stress this, because it is the same point in essence, is that all the dangers of cannabis use to which we have drawn your attention in this brief, and which are still somewhat in doubt and are still being tested out, are dependent on dose, frequency of use, and chronicity of use, continuity of use. None of them relates to the occasional user. They relate to the chronic, heavy, sustained user. From my point of view as a physician, it matters not to me whether someone takes it in one form or another. However, if his total dose intake is frequent, heavy and over a long period of time, he is exposing himself to risks. That concerns me as a physician, and I believe that concerns us as an association.

Senator Laird: The same thing is true of alcohol, is it not?

Dr. Solursh: It is true of all psychoactive drugs. If I may again go back to this question of perspective, there is no safe effective drug, whether it be now on prescription or not. For instance, there is much current controversy and concern about a drug called cocaine. Some of you will recall that cocaine was once very available in Coca-Cola; an extract of coke is for flavour and cola contains caffeine.

Cocaine is pharmacologically not all that different from a number of drugs now being sold over the counter. (*Three drugs named.*) The same risks that have been attributed to cocaine exist with those drugs. I know people who use them frequently during the day; they take one (*named*), get high on it, it causes nasal constriction, and exposes their nasal septum to the same risk of rupture as if they were inhaling cocaine. Again there is this question of perspective. There are a lot of things around; they are not safe. It is a question of misuse as opposed to just the question of use. There is no safe psychoactive drug.

Dr. Stephenson: There is no safe drug, period.

Dr. Solursh: There is no safe drug.

Senator Laird: I think Senator Bonnell, who is a medical man, or perhaps Senator McGrand, who is sitting next to me now, said that the chemical action of alcohol on the

body is not likely to be so long-lasting as the chemical reaction of marihuana.

Dr. Stephenson: It depends again on the size of the dose and the chronicity of use, or the continuity of use, and the amount that is ingested.

Mr. Geekie: Mr. Chairman, I wonder if I might be permitted simply to launch an appeal to the press who are in attendance. Dr. Solursh has given examples of drugs that are available over the counter to teenagers, and he has named specific products. I would seriously request the press not to name the specific products, because I think you will, quite rightly, be accused of contributing to improper utilization of these products. On behalf of the association, we would request that you indicate that there are psychoactive drugs available over the counter, not on prescription, without naming the specific products.

Dr. Solursh: I apologize, Mr. Chairman. In my usual enthusiasm to punctuate, I named some products with which the honourable senators would be familiar.

Senator Croll: Familiar? I never heard of them.

Dr. Solursh: My reference in fact was to nasal decongestant sprays.

Senator Croll: I think it is important that some indication be given that we agree with Mr. Geekie in his request that these matters be not publicized. It can only be a request, in respect of something that just slipped out.

The Chairman: I hope the press will understand that.

Senator Quart: You are an optimist.

Senator Sullivan: As a member of the medical profession I naturally do not want to be accused of being in complete agreement. On the whole, this is a well-written brief, which states very clearly and forcefully the Canadian Medical Association's position. However, there are two major criticisms that I think it important to bring up.

The first criticism relates to the statements on page 2 of the brief:

The social and health problems resulting from a criminal record far outweigh the crime of simple possession of cannabis for personal use . . . criminalization frequently produces far more serious, deleterious effects on the user than does the use of cannabis.

The latter statement is correctly labelled an opinion, but it is then treated as though it were a statement of fact, yet no evidence whatever is given to support it. If the brief had referred to "incarceration" rather than "criminalization", then the statement would have been given at least partial support by a number of studies. If "criminalization" means only having a criminal record, then the CMA can point to no solid evidence to back their claim.

The reports of the Le Dain Commission, the Wootton Committee and the Schaffer Commission all fail to deal with this question. The final report of the Le Dain Commission gave detailed statistics showing that most convictions for simple possession now bring only suspended sentences, conditional discharge or fines, and very few bring jail sentences. The report gave absolutely no evidence that conviction *per se* without incarceration has any demonstrable deleterious effect.

This is a subject on which there is truly a need for research rather than mere opinion. There already exists a

mechanism for obtaining erasure of a criminal record of a conviction on a charge of simple possession. One would wish to know why it has been used by a very low percentage of those eligible.

Finally, the second major criticism that I can see is the absence of any reference to the possible effect of de-criminalization on the level of cannabis use. The experience with teenage drinking problems after the lowering of the drinking age from 21 to 18 years suggests that this is a consideration to be taken very seriously. If the CMA believes that the use of cannabis should be strongly discouraged, why do they not discuss the possibility that a significant reduction in penalties might have a significant effect on the number of regular users and on the amount of use by those who already smoke it regularly?

We have heard all about Oregon, and the final sentence of the brief refers to the experience of Oregon and New Zealand. These should indeed be examined carefully, because it is very easy to draw an erroneous conclusion about them, and the brief fails to examine the matter in any depth at all. I am glad, Senator Neiman, you are having someone come from Oregon because, as Dr. Solursh knows, there is a division of opinion out there amongst our profession.

Dr. Stephenson: I believe there is a fair amount of documentation regarding the need for de-criminalization of particularly young people in relation to such substances as marihuana. The Le Dain Commission report on cannabis has several pages dealing with the cost of applying the criminal law to the distribution and use of cannabis. Many authors have written about this. The one I suppose we have depended upon primarily within our special committee has been Dr. John Unwin of Montreal, who spends all of his time dealing with adolescents, and a great deal of that time dealing with adolescents who have been involved with cannabis and with the law. On the basis of his expert opinion this statement has been made. However, he is not the only authority—and I believe we do recognize him as an authority—who has said this.

One of the questions which I raised was why there have been so few people who, having developed a criminal record as a result of their possession of cannabis, for personal use, I presume, have, in fact, moved to have it erased, and the reason is that the elapsed period of time is as yet not sufficient. Moreover, many of them are not aware of this mechanism. It is not, in fact, publicized to them with any regularity by anyone that I am aware of at any rate.

The last point that you raised was a very important point which the CMA would like to emphasize, and that is that we believe that much more research is needed, not just into the misuse of cannabis and other drugs but into the potential medical value, for example, of marihuana, because there have been some reports from valid scientific researchers that it has some use in certain specific medical problems. We would like to see research carried on in both directions—both into the medical use of the drug and into its misuse so that we have much more information, for example, to appear before you with.

Senator Sullivan: Thank you.

Senator Prowse: Dr. Stephenson, you want to get rid of the criminal element of the charge. Are you recommending that there be no offence for ordinary possession?

Dr. Stephenson: No, sir.

Senator Prowse: You are not going that far?

Dr. Stephenson: No, sir.

Senator Prowse: In other words, you are going along with what is in the act that we have in front of us now, which is moving it from the Narcotic Control Act to the Food and Drugs Act.

Dr. Stephenson: Yes. We are concerned that in fact there be no major stigma attached to the individual who is found to be in possession of marihuana for personal use. There might be a fine; there might be something of that sort.

Senator Prowse: The charge at the present time is under the Narcotic Control Act. It is not under the Criminal Code. It will go under the Food and Drugs Act and the procedures will then be under the Code. In other words, you would have what we call a summary conviction rather than an indictable offence.

At the present time those things would meet your requirements. There is a provision under the Code at the present time which deals with the offence so that, if in the opinion of the judge the penalty of a mere conviction will be greater than the damage that is done, the judge then has the right to give either an absolute discharge or a conditional discharge, which, in effect, is a dismissal of the offence, although that goes on the record.

Now, if it is an indictable offence, there is the provision that they have to wait five years to have the record expunged or sealed, whereas if it is the other, they have to wait two years.

Now we get down to what seems to me is the very difficult thing to get to. From a logical point of view, how do I explain to my grandchildren, the age group who would be concerned with this now, that while it is all right for them to have the stuff in their possession, nevertheless, if they give it to somebody else or if a person gives it to them, that is a very bad thing. In other words, I run right out of logic at some point, it seems to me.

You are coming in here and saying that it is all right to have it, but it is not all right to give it to them or to sell it to them. The gift is trafficking. How the devil do we ever get some logic into the criminal law so that we can explain it to a perfectly normal 14, 15 or 16 year old who is confused by what the old fogies have done? I am a little confused myself.

Dr. Stephenson: If I may say so, Mr. Chairman, I would hope that the honourable senator would start off his discussion with his grandchildren by listing the damaging effects of marihuana and encouraging the child to find its highs in some other area of activity, such as physical activity or working for the poor or doing some sort of volunteer work, because there are all sorts of highs which an individual can achieve. One of the things which the Canadian Medical Association has repeatedly emphasized is that there are many major potential health hazards in the chronic use of marihuana. I don't think that you are going to have a great deal of effect on your grandchild if, in fact, he is exposed to marihuana in his school, because he is going to try it anyway. But the vast majority of children who try it do not in fact continue to use it. They go to something else; and at the moment they are going to alcohol—not at the moment; it has been at least seven years, as a matter of fact, that the alcohol utilization has been rising.

Senator Prowse: It is a psychedelic drug. I presume people use it for the effect.

Senator Sullivan: That is right.

Dr. Stephenson: Yes, but that does not mean that if they use it once they are going to continue to use it.

Senator Prowse: If they try it once and don't get much of an effect out of it, maybe they will want to try more of it.

Dr. Stephenson: That is a possibility. It depends on whether the individual is in fact exercising what has been recommended by the Le Dain Commission and other experts, and that is informed personal choice regarding this material. Surely that is really what we are looking at in terms of any legislation in this country: the wise exercise of informed personal choice.

Senator Prowse: If we move this now and say we are not going to treat it as a narcotic, because it is not a narcotic—

Dr. Stephenson: No, it is not a narcotic.

Senator Prowse: And should not be considered as a narcotic. But we don't know just how dangerous it is. This is what we can say: "There is some evidence that it is dangerous and some evidence that it is not. We don't know. But we don't want to encourage you to get into it. You would be better off if you did not touch it at all." We can say this to them honestly.

Dr. Stephenson: Right.

Senator Prowse: But if there is any attempt to scare them, they will try it and find out for themselves that it is not that bad and they will say, "Poppa is a liar," and away we go.

What is wrong with moving it over there but just leaving it as an offence? Because the moment we make it not an offence to have it in possession, then we have, indirectly, surely, put our approval on possession by the very fact of doing this. This is where, logically, I find myself hung up right now. I am damned, if I can see how I can say I am not going to make it an offence to have it, but somehow I am going to make it a penitentiary offence for anybody to give it to you.

Senator Sullivan: How could you rule on that?

Senator Prowse: Logically, how can I support that kind of decision as a lawmaker?

Mr. Geekie: Mr. Chairman, may I try to clarify this situation with an example? I am not a physician, sir, and my colleagues very frequently refer to me as a translator from medicalese into English or French.

Senator Prowse: Goody!

Mr. Geekie: Essentially, sir, transferring marihuana, cannabis, from the Narcotic Control Act to the Food and Drugs Act is a step in the right direction. But it will not eliminate the attaining of a criminal record when you are convicted of possession under the Food and Drugs Act. The individual can still have a criminal record, although he is charged under the Food and Drugs Act. I want to make that point No. 1.

No. 2, the association is not suggesting or recommending legalization or the sale or anything. Secondly, it is not recommending that it not be an offence. We feel that it should remain an offence to be in possession of cannabis.

But the individual who is convicted of being in possession for simple personal use, (a) should not be sent to jail for this offence, and (b) should be punished in such a manner as by fine or other mechanisms, but should not be given a criminal record as a condition or a part of that conviction.

I hope, sir, that that may help to clarify. You may still follow the suggestion that the individual found in possession for simple personal use would be charged with an offence and, if convicted, would be fined or dealt with in some manner that the legislators would determine. But they would not send him to jail and they would not attach to him a permanent criminal record.

Senator Prowse: All right. Suppose now a person has been using it and has taken a good, big wallop of it and gets out and drives an automobile. Is he not then as dangerous a person on the highway as the fellow who has a reading of more than 0.08 of alcohol?

Mr. Geekie: Yes, sir, and I can refer you to the document that states that when a conviction or an illegal act is performed in conjunction with the use of marihuana, it should be treated in accordance with the law as it currently stands. If an individual was found to be intoxicated while driving, he would be so charged, whether it was drugs, or marihuana, or alcohol, or whatever it might be. If he was involved in an accident in which he killed an individual—and I am not a lawyer this would be presumably an involuntary manslaughter charge, or something of that nature, and he would be charged in exactly the same fashion, but he would not be given a criminal record for the simple possession of marihuana.

Senator Flynn: The criminal record you are speaking of is a criminal court record, just the same, under the proposed legislation. It is a theoretical difference.

Senator Prowse: If you get it under the Food and Drugs Act, where we are presumably going to put it, the conviction he gets is the same as if he gets caught with a mickey of gin. That is under the Ontario Liquor Control Board Act if you happen to be here, but whatever province you happen to be in the effect is the same.

Mr. Geekie: May I suggest that Dr. Bennett be permitted to speak to this? He has looked into this to some considerable degree, and he is the secretary of the CMA Canadian Bar liaison committee.

Dr. J. S. Bennett, director of Scientific Councils, Canadian Medical Association: Mr. Chairman, after that build-up I am not so sure I can help, because I am not a lawyer.

It is quite true that the joint committee of the CMA and the Canadian Bar Association have looked at this situation, and as we have consistently said since 1969, we do want the legal experts to clarify some of the legal jargon. We do not profess to have the legal expertise to provide the answers to such problems.

To answer the last senator's question, we have consistently asked for clarification of "trafficking" and "possession for purposes of trafficking". We have gone on asking for this because we believe it is a grey area that is not currently clear either to the medical profession or to the law.

From the point of view of the inconsistencies which I think you are trying to stress, it is quite true that we are

concerned about it, but we still feel, and have consistently felt, that the criminal appellation does have deleterious effects. It is quite true that somebody driving down the highway stoned on marihuana is just as great a menace as somebody driving down the highway stoned on alcohol. It does not make the offence any different, and in the brief we have submitted this morning we have stressed that where society has become directly involved, the criminal offence in that particular instance should apply; but we feel that simple possession for personal use should not have this criminal appellation, and we still maintain that until we know more about it there should be some penalty, or punitive effect; but our main concern is that, whether, as you say, it is under the Food and Drugs Act, or under the Narcotic Control Act, it still has this criminal appellation.

Senator Prowse: And the moment we say it is not an offence, then surely we are putting the trafficker into business?

The Chairman: But that is not what the witnesses have been saying.

Senator Prowse: But it is suggested that it should not be an offence for possession. All we are doing here is moving it over and making it a lesser offence by putting it under a more respectable part of the law, which is the Food and Drugs Act. This puts it into the amphetamine and LSD bracket.

Senator Laird: Mr. Chairman, why not get down to brass tacks on this thing? I take it, Dr. Bennett, you agree with Bill S-19?

Dr. Bennett: Mr. Chairman, again going back to the presentation which Dr. Solursh made back six or seven years ago, when we asked that this go under the Food and Drugs Act. The idea was twofold. One, because it is not a narcotic and it really has no business under the Narcotic Control Act, and secondly, by moving it under a different section of legislation it provides greater leniency, and the ability for the judiciary to look at it in a much more responsible fashion.

Senator Laird: That is exactly what we are doing. Let me remind you that now, simple possession, for a first offence, carries a fine of up to \$500, or, in default, three months. For subsequent offences the fine goes up to \$1,000 and, in default of payment, six months. Now, that is what the bill proposes to do. Is that not what you want us to do?

Dr. Bennett: It proposes that, but it still leaves the individual with a criminal record, and this is what we want removed.

Senator Prowse: Now you are doing what I suggested. If we take the criminal record away altogether, then we are telling them it is all right to have it. If it is all right to have it, presumably it is all right to use it. If it is all right to have it and use it, then it must be all right to get it from some place, because I have to go and walk to somebody that I am asking to go and break the law to give it to me. Somewhere logic breaks down.

Mr. Geekie: May I ask how one would get the connotation that it is all right to be in simple possession for personal use if, when you are caught, you are fined \$500?

Senator Prowse: You have missed the point here. If we move it over, and we put it under the Food and Drugs Act,

which we are presuming to do, we are leaving it as an offence; but if I understood Dr. Bennett what he would like to see is no offence for mere possession.

Dr. Stephenson: No. That is not correct. We have never said that.

Dr. Bennett: I did not say that, and if I left anybody with that impression I apologize. I did not say that at all. All I said was that we wanted the removal of the criminal appellation. That does not mean it should not be an offence.

Senator Prowse: It makes it a slightly respectable thing to do.

Senator Laird: That is why I think you must agree with Bill S-19.

Dr. Bennett: We agree with the approach but we do not agree with retention of criminalization. There seems to be this illogical confusion as to what constitutes an offence and what constitutes a criminal appellation.

Senator Laird: It is still an offence.

Senator Prowse: How do you think we can deal with it if we do not leave it with the courts? Are we going to put it in the family court?

Dr. Bennett: I go back to what I said. I am not a legal expert, and we have asked the legal people to clarify this, and I feel we are not asking for anything that is legally impossible. Surely in this day and age it is practical to make something an offence without necessarily making it a criminal offence.

The Chairman: I think every doctor here has boasted that he or she is a doctor and not a lawyer. I think we will leave that to the Canadian Bar Association when they appear before us. Senator McGrand.

Senator McGrand: Just one little question. In your brief you suggest that Parliament study the experience in New Zealand and Oregon. Now, we have discussed Oregon, we have discussed Sweden. What was the experience of New Zealand with this marihuana problem?

Dr. Stephenson: Senator, Dr. Bennett knows that in more detail, actually, than the rest of us do.

The Chairman: Dr. Bennett?

Dr. Bennett: Mr. Chairman, we had the privilege of having the Minister of Health of New Zealand come to the Canadian Medical Association and discuss this with us, and basically, what they have done—or rather, what they are doing, because it is not complete as yet—is instituting many of the recommendations that the Le Dain commission brought down. Indeed, they have taken the Le Dain commission almost in its entirety as a basis for their actions. As the minister said, it has saved them the cost of establishing their own commission, and they are going to put into effect the recommendations that were in the final volume, as approved by the majority of the Le Dain commission. It is too early, I think, to give you an opinion as to the effectiveness of what they have done. It is rather like the Oregon experience. It is still in its initial stages.

Senator Godfrey: I must say, Mr. Chairman, that one of the advantages to waiting patiently to be recognized is that by the time one is recognized most of the questions one wanted to ask have been answered.

The Chairman: Senator Godfrey, I am recognizing the senators in the order in which they raised their hands.

Senator Godfrey: I realize that, Mr. Chairman. We have just been talking about the criminal offence and I must say that I got caught for speeding a few weeks ago. It has not affected my health in any way, but my wife thought I had better use for my money. So this idea of its being a criminal offence is something I am not quite clear about at all. I should like to go back to the question of hashish and I should like to clear up one point; when somebody uses hashish, does he dilute it to the extent that it may be the same amount as he would consume in say a marihuana cigarette? Like, when you are drinking hard liquor, you might put a lot of water into it and so on. Is it the same thing?

Dr. Solursh: Are you speaking of hashish or hashish oil, senator?

Senator Godfrey: Hashish.

Dr. Solursh: It is generally smoked in a pipe or on the tip of a cigarette so that the fumes may be inhaled. It is not diluted. In fact it is not convenient to dilute it. As a rule it is, in effect, more potent than an equivalent volume of marihuana but the intake may vary from person to person as indeed the intake of marihuana may vary. For instance one may smoke four marihuana cigarettes, and with a small amount of hashish, the effect may be the same. So again our concern is with intake, potency, total dose inhaled, the psychological state of the user, the setting in which he finds himself and so on. So it is not simply a question of potency. However, in its usual form of use it is used as hash, and if one were to inhale the fumes from the same weight of hash as marihuana one would be taking in a stronger dose of active components.

Senator Godfrey: In actual practice, then, say somebody uses hash on a Saturday night at a party instead of marihuana, he will inhale more and get more effect so that it is more dangerous. Am I right?

Dr. Solursh: It is more potent. May I repeat that while we are recommending against the use—and here I must admit I am experiencing a little personal discomfort because when the council warned against the use of cannabis I was discomforted that it did not warn against the use of all psychoactive drugs in general because I hate to isolate cannabis. But I agree with what the council has said. I would also warn and in fact do warn my patients against the use of this drug. Now \$700,000 or more—I cannot tell you the exact figure—has been spent on quantitative scientific research to document the effects of cannabis on drivers. Were this not such an august body I would use strong language to describe the necessity for that research. I am sure some of you have heard the language I would like to use. In fact, any idiot clinician who has seen several hundred thousand people use cannabis either in the form of marihuana or hashish knows that—and here, may I say, senator, that pharmacologists and doctors do not agree on the classification and that it is arguable—but we know that in small doses it has some sedative and some stimulative effects, and in higher doses it may be hallucinogenic. May I say that your average idiot clinician with any experience in the field did not have to spend hundreds of thousands of dollars around the world to tell you that the person who is flying the plane I am in, with one drink or one joint, may be more relaxed, but if he gets wiped,

smashed or stoned—or whatever word you care to pick upon—on any intoxicant, then he is a bloody menace on the highway or in the pilot's seat. I do not want anybody driving a car down the street who is stoned on anything. Those of us who have seen people stoned recognize that there is psychomotor inco-ordination and that judgment is impaired and so on. There are areas in which we do not need extensive research to tell us that there is risk, and this is one of them. To me that does not involve the question as to whether he smoked hash or whether he smoked marihuana, but it involves the state of his psychomotor co-ordination, of his judgment, of his mental functions and so on. That is what matters. If he is quite stoned, if I may use that word, I do not want him driving anywhere. He is a menace. And I do not care what he used to get that way.

Mr. Geekie: If I may make a reply to a question posed earlier as to what in essence the association thought of Bill S-19, I would like to quote from a news release prepared for distribution relative to our appearance here.

This states:

"Our federal legislators are on the right track but they haven't gone far enough." The CMA strongly urges that this legislation be amended to avoid the establishment of a criminal record for simple possession. Failing the realization of that objective, we hope the Senate, and/or the House of Commons, will make provision for the automatic erasure of the criminal record for those found guilty of simple possession for personal use after a two or three year "charge free" probationary period."

So, sir, we think that Bill S-19 is a great move in the right direction, but I would hope that it would go another step forward.

Senator Prowse: It contains the element of a traffic ticket as opposed to a vehicle-moving offence.

Senator Croll: We say that it is a narcotic under the act at the present time. In other words, it is not really a narcotic, but it is classified as a narcotic under the act. That is the law. So the country has said and the medical association here has said. But the medical men in Turkey and Greece and the Mediterranean say that it is a narcotic and they argue this point from time to time. So where is the difference? And why?

Dr. Solursh: Pharmacologically it is not a narcotic. Any pharmacologist will tell you it is not a narcotic.

Dr. Stephenson: Whether Greek, Italian, Turkish or any other nationality.

Senator Prowse: But internationally it is included among the narcotics by most countries.

Mr. Geekie: Under the international agreement, several governments including Canada have misclassified cannabis as a narcotic. But it is not.

Senator Croll: The American government who paid the Turks not to grow opium and some of the other countries talk of it as a narcotic and all the literature that I see, outside of medical literature, speaks of it as a narcotic.

Dr. Stephenson: Pharmacologically it is not a narcotic.

Senator Prowse: But legally it is a narcotic because the act says it is.

Dr. Bennett: Mr. Chairman, I think the situation is clarified under the Convention of Psychotropic Substances, 1971, in that the classification of cannabis is quite clearly removed from the section on narcotics. All the participating countries have not yet signed it—nor has Canada, as you know—but when that convention is brought into force it will clearly outline that cannabis is not a narcotic.

Senator Godfrey: Just for the record, could we have a definition as to what is a narcotic? We know that cannabis is not. But what is a narcotic?

Senator Prowse: Pharmacologically.

Senator Godfrey: And I would like the definition in English rather than in medical jargon.

Senator Flynn: We have a dictionary.

Senator Sullivan: Mr. Chairman, it will be quite an event when the representatives of the legal profession appear.

Senator Flynn: We are not asking for a legal definition, but a truth, which the dictionary would provide, I am quite sure.

Mr. Geekie: Mr. Chairman, I seriously doubt that any of my colleagues will have at their fingertips the clear definition of a narcotic. Might I suggest, from the point of view of a pharmacologist, that we will provide the Senate with that definition and a translation of same.

Lastly, we have not brought forth, because we frankly felt that you did not specifically require it, though several of you have noted it, that we have considerable documentation for the opinions and positions put forward in the brief. It might be of value to you, sir, if we were to provide you with those references and documents together with the definition.

The Chairman: Please do that. Are there further questions?

Senator Laird: Will the witnesses return after lunch? I have only one question.

The Chairman: We will adjourn until 2.15 p.m. I wish to say to the members of the committee that I would like a brief session *in camera*, before the day is out. I presume that the best time would be immediately following the hearing this afternoon.

The committee adjourned until 2.15 p.m.

At 2.35 p.m. the sitting was resumed.

The Chairman: Honourable senators have just had distributed to them a definition of a narcotic. Is it the wish of honourable senators that it be read into the record?

Senator Prowse: I think it should be.

The Chairman: Would you please read it, Mr. Geekie?

Mr. Geekie: It reads:

A narcotic is a chemical compound that produces a reversible depressive effect on the central nervous system. The precise effect depends on such factors as

dosage, synergism with other drugs, tolerance, addiction and the physical state of health; effects may range from euphoria to unconsciousness. Pharmacologically, a narcotic may be defined as any drug derived from opium or coca, or any of their natural or synthetic derivatives, or any drug that has narcotic properties similar to those of morphine.

I would refer you back, sir, to our statement that cannabis does not qualify under that category.

Senator Langlois: What is the authority for this definition?

Mr. Geekie: This is taken from the International Pharmacopoeia.

Senator Prowse: Anything that is described in the Narcotic Control Act is a narcotic?

Mr. Geekie: Legally.

Senator Godfrey: The *Shorter Oxford Dictionary* simply says:

Having the effect of inducing stupor, sleep, or insensibility. Producing sleep or dullness.

An Hon. Senator: So do the Senate hearings.

Mr. Geekie: With all due respect, senator, that includes alcohol.

Senator Godfrey: Certainly on me it does.

Dr. Solursh: And all narcotics and sedatives. The pharmacological definition is the one for our purposes. I agree with the honourable senator that if someone defines me as being short, I am legally short. Pharmacologically these are derivatives of opium usually and perhaps coca. We want to be more specific about that. I had mentioned to Dr. Stephenson before—perhaps Mr. Geekie can help here—that my recall of the World Medical Association meeting several years ago, in which I was involved, is that it evolved around this, and this definition was accepted because of the confusion regarding cannabis. I would refer you to the fact that the World Medical Association has accepted this.

Senator Prowse: Cannabis characteristics are not generally associated with what pharmacologically you referred to as narcotics.

Dr. Solursh: No more, sir, than on the one hand LSD or on the other diazepam or barbiturates.

Senator Prowse: It is not the same with morphine.

Dr. Solursh: Pharmacologically it is not.

The Chairman: Before we adjourned, Senator Laird had his hand up to ask a question. I will now give him the opportunity to put his question.

Senator Laird: Mr. Chairman, my sole objective is to try to shorten the proceedings. Arising from all the discussion, I will put the following question to the witnesses, particularly to Dr. Stephenson. What you are asking us to do is to retain in the bill the proposed penalties for possession, but you are asking us to make some sort of an amendment whereby conviction for possession will not become a matter of record. Is that right?

Dr. Stephenson: I think that is very close to our request, Senator Laird, yes.

Senator Flynn: What is the importance of the record in this case? Your problem with the record is only what you said this morning?

Dr. Stephenson: The problem with the record is not only with the record—perhaps I should have said this also—but with the entire process which, in fact, traditionally has produced the record. Particularly for young offenders who have been charged with simple possession, the record is terribly important, probably the most important part of it. The process of criminalization—the charging, the court procedure, the whole mechanism—is something which apparently—as a matter of fact it has been documented to be—is damaging emotionally in a very severe way to many young people.

Senator Flynn: If the legislation does not achieve that objective, you would be sorry?

Dr. Stephenson: We would be sorry; but we do not anticipate always that legislation will achieve all of the goals we would set in our society.

Senator Flynn: You realize that presently the offence is under the Narcotic Control Act, and under the proposed legislation it will be under the Food and Drugs Act? You do not say that one is worse than the other.

Dr. Stephenson: We believe it is inappropriate to have it under the Narcotic Control Act and it probably is worse under that act than under the Food and Drugs Act.

Senator Flynn: Legally speaking that would be a matter for the lawyers to decide.

Dr. Stephenson: That is exactly right.

Senator Flynn: If this is not the case, your objective is not achieved.

Dr. Stephenson: That is a real possibility.

Senator Flynn: We realize that the penalty will be lesser; otherwise I voice my humble opinion that it does not change anything.

Dr. Stephenson: Any process, senator, which would in fact minimize the emotional mental stress damage, to the young offender particularly, is the goal which we would strive for.

Senator Flynn: Reducing the penalty will have something to do with it, but under the present legislation the court can impose a fine only—the same fine as that which could be imposed under the proposed legislation.

Dr. Stephenson: I have the feeling sir, that the courts, although they are happily—and hopefully will remain so—totally separated from, one might say, the legislative jurisdiction of government would in fact be guided by the intent of the legislators who drew up the law; and certainly your arguments, in favour of or in opposition, would I am sure have some effect.

Senator Flynn: Or is it wishful thinking?

Senator Croll: What could they do if the judge wanted to be lenient and said, "I will do something here; I will fine him \$10." The offender is criminalized. He has a record. It is there. It is there under the one hand or the other. That is what Senator Flynn is saying.

Dr. Stephenson: The niceties of the record are something that I believe the legal system will have to work out.

Senator Croll: What you would like to have is an offence that is not an offence. That may not be a bad idea. What you are worrying about is that he meets it some day when he looks for a bond, or crosses the border, or some day when he has forgotten about it. How do you avoid it? Is there not something else that is necessary there. I have been trying to think of what it is. I thought maybe we would have been given some idea from the legal viewpoint.

Senator Godfrey: You are worried about the stigma attached to someone who has been convicted?

Dr. Stephenson: Yes.

Senator Godfrey: But will there be any real stigma in future years any more than that attached to a man who has committed a traffic offence? There are over a million young Canadians who are using marihuana.

Dr. Stephenson: We would hope that there would not be any more stigma attached than that attached to a minor traffic offence.

Senator Croll: You try to get a bond later on!

Senator Godfrey: I think it will go a long way.

Senator Croll: Was Mr. Geekie about to say something?

Mr. Geekie: I was just going to add that the very fact that this product is moved from the Narcotic Control Act, with the very serious public connotation of narcotic, to the Food and Drugs Act, will unquestionably have a psychological effect not only on the users, on those who are convicted, but also on the judges who are sentencing individuals. I would think it is to be expected that more of these cases will be dealt with in future, as was indicated earlier, by either dismissing them or granting absolute discharges.

With respect to the criminal record aspect of it, is it not within the realm of our legislators to provide for a mechanism which, after a reasonable period of time during which no additional charges or convictions were laid against the individual involved, would provide for the automatic erasure of that individual's record, so that a young individual of 14 or 15 years of age, by the time he reaches 18 or 19 years of age, at the very least, will not require—

Senator Croll: That can be done now.

Senator Flynn: That is already provided for.

Mr. Geekie: Only if the individual knows to apply for it and has the mechanism to do so.

Senator Flynn: No, I do not think so. In the case of a juvenile, there is no records. If the individual is under 16 years of age, there is no record.

Senator Croll: That is not quite true.

Senator Flynn: To move it simply from the Narcotic Control Act to the Food and Drugs Act does not solve the problem.

Senator Croll: I believe juveniles do have a record, Senator Flynn. I can recall coming across a young man who had grown up and was suddenly faced with a record of something he did during his juvenile years.

Senator Flynn: You may be right.

Mr. Geekie: I might say, we checked this with the association's legal counsel and we were advised that under the current legislation, to have that criminal record erased, the individual must make application. He must know he has to do so and he must make an application. It is not automatic.

Senator Croll: It is not a difficult process. The application simply consists of the writing of a letter. Once that is done, the machinery is put into motion. The department is very good about it. If it can erase the record, it will do so.

Senator Ferguson: Who advises the individuals whether they can do that?

Senator Croll: I do not know. They do not get advice. You are quite right.

Dr. Solursh: With your permission, Mr. Chairman, I should like to quote two brief portions of the Le Dain Report on cannabis. These will provide the background to our concerns, and I think the committee should hear the specifics from the report itself. These two portions of the Le Dain Report were taken into consideration by us and are, in part, the reason for our recommendation.

First, I should like to quote from page 292 of the report, as follows:

The Costs of Applying the Criminal Law to the Distribution and Use of Cannabis

The costs of the criminal law prohibition of cannabis which are generally referred to include the following: (1) the effect of criminal conviction, particularly on young people; (2) encouraging the development of an illicit market, with possible involvement of organized crime; (3) obliging people to engage in crime or at least to deal with criminal types to supply themselves with the drug; (4) exposing people to other, more dangerous, drugs by forcing them to have contact with traffickers who handle a variety of drugs; (5) encouraging the development of a deviant subculture; (6) undermining the credibility of drug education, and in particular, information about more dangerous drugs; (7) the use of extraordinary methods of enforcement; (8) creating disrespect for law and law enforcement generally; (9) diverting our law enforcement resources from more important tasks; and (10) adversely affecting the morale of law enforcement authorities.

I quote briefly from page 293, the first two full paragraphs:

It is particularly serious that several thousand young people should suffer the stigma and other consequences of arrest, trial and criminal conviction. Even if conviction does not result in imprisonment it can still have very serious consequences by its effect on vocational opportunities, the right to travel and other rights and privileges. There is also the harsh effect of contact with the criminal law process. The effect on the offender's family must also be taken into account. The mental suffering which these events can produce in parents is a very substantial cost. Further, there is the understandable sense of injustice at being the one who is unlucky enough to be caught. There cannot be any systematic attempt to enforce the law, and large numbers remain relatively immune from detection.

And apropos the last question:

Even where there is provision, as there is under the present law, for the granting of a pardon after a cer-

tain period of time, the knowledge which a lot of people invariably possess of a conviction and the knowledge which can be obtained by interested parties through careful investigation cannot be eliminated.

Senator Flynn: I suggest to you that the present legislation does not cure any of those things—not one.

Dr. Solursh: There is no question, Senator Flynn, that our general concept does not cure all these things—

Senator Flynn: Not one.

Dr. Solursh: —but it speaks to many of them.

Senator Croll: Speaks, but does not cure.

Dr. Solursh: Perhaps we cannot do that alone, senator. One of the questions raised earlier was why people do not seek pardons. I have had a good deal of clinical contact with this situation and have discussed it with many of my colleagues, and it is my view that many people, particularly young people, are not aware of this aspect of the legislation and will not likely become aware of it. Also, there are those who are, say, turned off—

Senator Croll: Hesitant.

Dr. Solursh: Not hesitant, senator, but, in effect, so alienated or angry, if you like, at the system which found them guilty of this kind of offence that they do not seek an erasure of their records. We would prefer to see a structure in which the onus is not upon the individual to seek a pardon some years later, but rather that it be an automatic process.

I agree with Senator Flynn that we do not have a simple solution. We are simply pointing out our concerns, and it was to that end that I quoted the Le Dain Report on cannabis.

Senator Flynn: I appreciate that. I am simply saying that the recommendations in the Le Dain Report on cannabis are not dealt with in this legislation. The young man who gets marijuana has to get it from someone who is illegally supplying him with it. That is the main thing. If he is found guilty of the offence and is fined \$1,000 instead of \$5,000, it does not make any difference in principle.

Dr. Solursh: Short of legalization, senator, there is no way of avoiding contact with a subculture which would encourage the use to further and more dangerous substances. Yet we as an association are not prepared to take or suggest the taking of that step—and I admit this is a conflict for us, as it is for you—because of the other problems which it raises at this time. We do not feel that it is proper, based on our current state of knowledge, to put ourselves in the position where turning back the clock would be difficult. In saying this, we know we are subject to criticism. There is no ideal position, and the position which we put forth is something of a middle of the road position. It is subject to criticism; it is imperfect.

Senator Prowse: Would you agree that if we do what is proposed in this bill—that is, to make the penalty lighter and the offence a less serious one than possession of a narcotic—that we may be giving encouragement to people on the borderline to try it who otherwise would not because they would not take the risk of being convicted of possession of a narcotic?

Dr. Solursh: I find no difficulty in answering that question, senator. There is no question in my mind that if we

lessen the penalty for any offence we decrease the deterrent factor, and although that has not stopped several million Canadians from trying this drug, there are people now sitting on the fence—and I know not what numbers—who, undoubtedly, will come off the fence. All we can suggest to you is that we have weighed in our minds the pros and cons and feel that to be the best approach. However, if you point out to us that somebody somewhere who has been hesitating to use these drugs may now use them, I cannot argue; I am sure that is correct for some people.

Senator Prowse: So the more people who are using them, if the dangers you see are in fact there, the more young people will be put into a dangerous position than are in a dangerous position at the present time. It may not be many more, but it will be some more, will it not?

Dr. Stephenson: From my slightly biased point of view, which is not quite the same as Dr. Solursh's since he practices psychiatry, I have a little less cynical opinion of the young people of Canada. In my area, which I think has been reasonably well noted for the utilization or the misuse of drugs over the last four or five years, there is a very definite lessening in the use of marijuana not because of the penalties but because the children are becoming much more aware of the potential damage. If, at the same time that we reduce the implications of possible emotional damage to those who in fact are charged, we tend to keep up an information flow which is valid and accurate to young people, so that they can make their assessments in a sensible kind of way, then we will not have a great flood of people falling off the fence on the side of using cannabis; they may fall off the fence on the side of not using it because they know more about it.

Senator Prowse: On balance.

Dr. Stephenson: On balance.

Senator Prowse: You do not see any serious damage?

Dr. Stephenson: I am sure there are some, as Dr. Solursh has suggested, who will try it because of the penalty becoming no longer so severe. If we do the job of education that we must do, then I think there will be as many, if not more, who will go in the other direction.

Senator Flynn: How can you justify diminishing the penalty without being assured in some way that there is less danger than we thought in the use of marijuana? If we are still as convinced as we were before that misuse of cannabis is dangerous, how could we justify adopting legislation that will diminish the penalties?

Dr. Solursh: I suggest that one of the greatest difficulties we have in this field is, as Dr. Unwin has often pointed out, and as I have pointed out, that cannabis is somewhat of a red flag, a symbol; it is more than a drug; it possesses all kinds of threats to people, some of which are, if you like, exaggerated in our responses, because it is not the drug we grew up with, it is not the one we accept, it represents rebellion, it represents confrontation, it represents a challenge; we are discomfited by it. Our response as a society therefore tends to be greater than it need be. What we are pleading for is, if you like, a perspective.

We have information that cannabis is not a safe drug. We know from experience as physicians that there is, as Dr. Stephenson says, no safe drug. However, we have alluded to research which raises a question of chromosomal damage, for instance in white cells or scrapings from

inside the mouth. Are you aware, honourable senators, that the same information exists with regard to caffeine, which you drink in your coffee and tea?

There are risks, but it is by no means only cannabis. In the perspective of other drugs, and keeping in mind the widespread nature of its use, keeping in mind that there is a difference between use and misuse, I think we can attain a perspective which enables us not to get in a great flap, but to recognize that there are risks. That is where Dr. Stephenson and I, and the association, feel that education and reasonable communications, not only from the government and professional bodies, but between parents and kids, and amongst young people, are extremely important. We feel that in the long run that is more important than a law which is unenforceable, when many of our police are in fact discomfited—and I know this personally—with the existing legislation because it is so impracticable.

Senator Flynn: You mean the proposed legislation will be enforceable?

Dr. Solursh: I do not believe there is any way in which you can enforce a prohibition against the use of any drug which a wide segment of society chooses to utilize. As Dr. Stephenson pointed out, there has been a levelling off. There has not been a drop in utilization, but there has been a levelling off in the curve.

Senator Flynn: But it has nothing to do with legislation. What I am asking you is the factual basis for the present legislation, which puts this offence under the Narcotic Control Act.

Dr. Solursh: There was none.

Senator Flynn: There was none?

Dr. Solursh: There was an inadequate factual basis.

Senator Flynn: Was it more feared at that time than now?

Dr. Solursh: Yes.

Dr. Stephenson: Yes.

Senator Flynn: It was more feared at that time than it is now?

Dr. Solursh: In the thirties, yes.

Senator Flynn: That is the point, and it is very important. If you say that the dangers appear less today than they used to be, then you have a justification.

Senator Croll: What strikes me as following from that is this. You are medical people. Criminologists, who deal with these people, who know them, who know them more intimately than you do or anyone else does, say, "We have changed our minds. We think it ought to be legalized." Do doctors think in a way that is different from criminologists, or lawyers or somebody else? Do we break ourselves up into various segments? These people are experienced, mind you. I am not. You are experienced from the health point of view. However, here are people who live with them, who say they have changed their minds in the last couple of years, or this year.

Dr. Solursh: Our personalities and our training differ, and sometimes indeed our opinions differ. I speak personally as a psychiatrist with fairly extensive clinical contacts, with street experience, with a good deal of medical-

legal work, and as an adviser to the Minister of Corrections in Ontario, as one very intimately involved with corrections. Yet with a background as physicians, which is a different background, which has a different orientation from that that the criminologist brings to his work, we can only speak from our background and orientation, and we know you will take into account these different realities that people bring to you, and you will try to meld them together in the way you feel best for the community.

Dr. Stephenson: Our primary concern is the health of the people of this country, particularly the young people in this respect. That means total health, but not just physical health.

Senator Fergusson: Quite a lot has been said about education. It seems to me this is very important, and those who are likely to be taking drugs should be made aware of the dangers. What does your association do to educate people in this respect?

Dr. Stephenson: We do provide background information for the thousands of high school students in Canada who write to us every year saying they have to do a project on something, usually on cannabis or something of that sort. We provide that background information. Also, through our provincial divisions in Ontario, I can tell you that the group is very active; there is a resource committee to the Department of Education, so that for the course in health in various school areas—of course, the local school board decides whether it should be included or not—we provide speakers; we also provide information for the curriculum development program on this subject of drug information.

Senator Fergusson: Is this only in Ontario?

Dr. Stephenson: No. I am speaking from my personal experience in Ontario, but I know it is happening also in other provinces. I cannot think of one province in which it is not happening at the moment.

Mr. Geekie: I would like to add two things to what Dr. Stephenson has said. I think we should recognize that the vast majority of public education in this subject is being done by voluntary health agencies in a variety of forms. Let me take an example. Most provinces now have a Drug Addiction Research Foundation, which conducts a very extensive public education program on this subject. Certainly the federal government's Department of National Health program in respect of the non-medical use of drugs, while it has not been as active as many of us would like it to be, has been very active in this respect.

While on the question of education, which is really my personal background, I would like to add an addendum to what Dr. Stephenson said about providing accurate, honest information. I would add one more word as being extremely important with teenagers, and that is credibility, because with them it is extremely important. What I am now going to say is unquestionably going to get me into trouble.

Senator Sullivan: Good.

Mr. Geekie: But facts are facts. According to the current, actual hard facts, factual scientific knowledge that we have as of this date, unquestionably the physical and mental damage and social damage that accrues from the misuse and abuse of alcohol exceeds many, many, many-fold the damage that is done by cannabis. The majority of teenagers, and practically all of those who have had per-

sonal experience of cannabis, are astutely aware of that fact. When they get exposed to what can only be classified as propaganda by those who would like to expound on the extreme hazards of cannabis utilization, to the complete neglect of pointing out the relationship and the degrees of problems with alcohol, frankly, the credibility becomes zero and they just turn you off.

I appreciate that some members of our group have been accused on occasion of drawing this as a red herring across the hazards of cannabis. In no way do we suggest this. There are, as we have indicated, definite known health hazards from cannabis use. Facts are facts and the alcohol problem in fact far exceeds anything related to cannabis.

Dr. Solursh: Ladies and gentlemen, may I give a simple instance just to illustrate. Two years ago, to be precise, I conducted a brief prospective study of patients seen by our psychiatric consultation team in our general hospital. There were 100 patients. This included everything from, if you will excuse the expression, little old ladies with depression to little old men who were unhappy because their prostates were enlarged—and not emergencies. It still turned out that, of that 100, fully half had a significant drug-related health problem. Fully half of those were with alcohol. Most of the rest were with overdoses of what their doctor prescribed. Does that give you a little perspective? Those are hard numbers, if you like, because we just took them as they came rather than looking backward.

Senator Croll: Those people were chosen for that test, but normally that is not the percentage, surely?

Dr. Solursh: I leave you to interpret the results, senator. Well, I will interpret the results. I see, and my colleagues see, numbers of people who come, not only complaining of drug related problems at all, but complaining of many other problems. I have no doubt—and this has been discussed now at several medical meetings, and perhaps Dr. Stephenson will comment on this—that if the family practitioner takes an adequate history, whatever the reason for the person presenting himself—it may be for a routine visit—I have no doubt that he or she will see far more cases of discomfort—and I speak now particularly of acute toxic reaction—related to coffee than to cannabis. I am assuming now that the doctor is a general physician, because he or she sees a wider variety of people. As you say, ours are somewhat selected in psychiatry. If he or she does a proper mental status examination, takes a history, physically examines the patient, does whatever laboratory tests are at his or her disposal, almost invariably it will be found that there are more people drinking ten to fifteen cups of coffee or cokes a day, complaining of anxiety which stops when they cease that, than will be found from any objective findings or subjective complaints related to the intake of cannabis.

Perhaps Dr. Stephenson will comment on this. This came up at last year's American Psychiatric Association meeting, to give you one example.

Senator Prowse: Is that because they have been taking coffee longer?

Dr. Solursh: We indeed drink more coffee than we smoke cannabis.

Senator Prowse: And it has been around for a longer period of time.

Dr. Solursh: Cannabis has been around for a long period of time, senator.

Senator Prowse: But not with the people here, because it really only started in 1965-66.

Dr. Stephenson: Oh, no. No, no.

Dr. Solursh: No way.

Senator Croll: Doctor, let us hear your point of view.

Dr. Stephenson: I have to agree completely with the statements made by Dr. Solursh, because this is precisely what I see as a practising family physician. There are many more problems related to other stimulants and other depressants, which we utilize much more freely in our society without any kind of penalty, than there are for cannabis. You have already put us on the record with three drugs, but there are two kinds of soft drink.

Mr. Geekie: No brand names, please.

Senator McGrand: You mentioned other symptoms. What are those other symptoms?

Dr. Stephenson: Agitation, disturbances in metabolic process, sleeplessness, skin irritations—the whole gamut.

Dr. Solursh: For instance, sir, and I will avoid brand names this time, Dr. Stephenson, there is a brand of stimulant on the market which is available over the counter and which contains 100 milligrams of caffeine per tablet. Two or three tablets of this substance result not only in anxiety and agitation, and sometimes fear, but may result in an intoxicated state in which, again I don't know how simply to describe it, one is stoned, one is high, one is intoxicated. This is not as uncommon as you may wish to think. I will keep away from brand names.

Senator McGrand: What about Coca-Cola?

Senator Flynn: He said he wanted to keep away from brand names, senator.

Dr. Solursh: That substance, as you know, had a history before the turn of the century of containing cocaine derived from coca and cola. It was amended in 1908, I believe, in this country to remove the cocaine. It still contains an extract of coca, for taste, and caffeine from cola, so that it has stimulant properties and it may produce the kind of side effects Dr. Stephenson and I are talking about, and I am sure we have both seen them.

Mr. Geekie: But in pretty excessively high dosages.

Senator Neiman: Mr. Chairman, I wonder if we could get an expression or statement regarding two aspects of this problem which are quite different. One is the question of something comparable to the breathalyzer test. In other words, if we were to consider any type of legalization or semi-legalization of this drug, could there be any accurate measure of the degree of intake of cannabis products as compared to the breathalyzer test?

The other matter I should like to hear some comment on later is with respect to the widely held opinion that the use of marijuana inevitably leads to the use of such drugs as heroin. That is an area of concern we are going to have to deal with in speaking to the general public about any change in the laws we think are necessary.

Dr. Stephenson: Mr. Chairman, those of us who have difficulty relating the results of breathalyzer tests to the degree of intoxication of an individual, and therefore to the degree of liability of that individual, would have grave

concerns about relating any kinds of testing procedure, as inaccurately as we can do it at least at the moment, to any kind of measure to control the distribution or legalization, if you like, which is a word I don't like to use in terms of cannabis at the moment.

Dr. Solursh: Current technology is moving rapidly towards more availability of techniques which would allow us to measure accurately the small amounts of cannabis in the blood. It can be done in some instances, but at expense; and this is not readily available. More important, we have no clinical way yet of relating levels to dangers or risks. So we are not in a position to apply that at the moment.

With respect to the question of escalation of drugs, you all know the standing joke that "everybody started with milk". We would not make light of this, however. I think there is an issue here and we have considered it very seriously. The psychoactive drug with which most people begin, and this is well recognized medically, and which may lead to wishing to try stronger drugs, is almost invariably alcohol. However, there may be some correlation between cannabis and other drugs for some people. As you asked, it is not so invariably, and is not so even most of the time. As the Le Dain commission pointed out, even the figures of five to seven per cent which have been quoted are unduly high. It does not, most of the time, lead to hard drugs, as you refer to them. However, when one is in contact with the criminal subculture, it is already breaking the law, and there is a greater contact with a temptation to use, and if you like, willingness to use, other drugs. So there may be some slight correlation. I do not think we can write it off in its entirety.

Senator Laird: Is it not really a personality problem?

Dr. Solursh: The personality is involved. The contact with the criminal situation is involved, yes; but—and this is well accepted medically—there is nothing pharmacologically about cannabis which predisposes to the use of heroin, cocaine, et cetera.

Senator Laird: That is why I say it is really, fundamentally, a personality problem.

Senator Prowse: You are more likely to have a personality that is predisposed to the use of both.

Senator Croll: In the last ten years the problem has been an acute one, but it has eased off a bit now, and during that time you people were with the problem and have studied it. You talk to us now about these things, but all we know about it is what we read in the newspapers. None of us was in that sphere. Has there been anything at all found in the way of antagonistic drugs?

Dr. Stephenson: Antagonistic to cannabis? A cannabis antagonist?

Senator Croll: You have had ten years at it.

Dr. Solursh: If the specific question is, sir, as I understand it, as with morphine derivatives, heroin, etcetera, there is a specific antagonist which blocks the effects, I am not aware of any that specifically block the effects of cannabis. I do not know if anyone else is so aware. I am certainly not aware of any.

Senator Croll: Has there not been any studies or attempts made? Are you not aware of any, or are you not

aware that somebody has done something along those lines?

Dr. Solursh: I think I have reasonable contacts with colleagues in other countries, but I am not aware of endeavours to locate such antagonists.

Mr. Geekie: I think what Senator Croll is referring to is really a question of whether or not there is an actual physical addiction to cannabis and, thus, is there a need for some physical unit to act as an antagonist. Is that really not the purpose of your question?

Senator Croll: That is what I have in mind.

Mr. Geekie: Is there a physical addiction to cannabis?

Senator Croll: If that clarifies what I had in mind, that's fine. If I did not clarify it, I am sorry.

Dr. Solursh: The general body of opinion holds that there is no clear physical dependence. Some people smoke less cannabis and seem to get the same high and a "reverse tolerance" has been described. This is not always so. Other people in fact smoke more and get higher. That area is unclear; but the general body of opinion is that there is not an adaptation, physiologically, followed by a typical withdrawal syndrome. We have all seen some people—I certainly have—who have been using very high doses of cannabis, and who are jittery, and unable to sleep for several days following cessation; so it raises the question; but the general body, as I say, of the people as a whole in the medical and pharmacological fields would hold that there is no documented physical addiction associated with cannabis use.

Mr. Geekie: I think, to translate, that in the case of an addict to a narcotic, there is a tendency to a natural increase in the amount that you require, physically, to continue to function, that is in the true addict, as we see on television from time to time. In cannabis you do not see this phenomenon in the same way.

Dr. Solursh: The two marks of physical dependence, or "addiction" are to develop a higher tolerance, that is, requiring a higher dose to get the same effect, and secondly, the presence of a typical abstinence syndrome: When one stops it there is some kind of withdrawal syndrome. These do not appear to exist with cannabis.

Senator Croll: Well, I am not getting very far. I am going to need a psychiatrist myself, if I stay around here much longer. But is there such a thing as a difference between, say, the doctor and myself as opiate receptors?

Dr. Stephenson: Yes, and as cannabis, receptors as well.

Senator Croll: You cannot say why, but there is.

Dr. Solursh: You mean a psychological dependency, sir, on any drug, for example—well, I was going to name another one, but I won't. It can be on any drug at all.

Dr. Stephenson: Minor tranquilizers, for example.

Senator Flynn: Mr. Chairman, may I say that I have been very impressed with the contribution made by the representatives of the CMA before us. We are most grateful, and I would like them to know that the questions we have put to them are not intended to take away anything from the great work that they are accomplishing, and the great responsibility that they show in the accomplishment of their task; but I would say that my conclusion would be

that they are not helping us too much in translating their medical problems into legal solutions.

The Chairman: They admitted they were not lawyers.

Senator Prowse: Well, let us give them credit for trying, anyway.

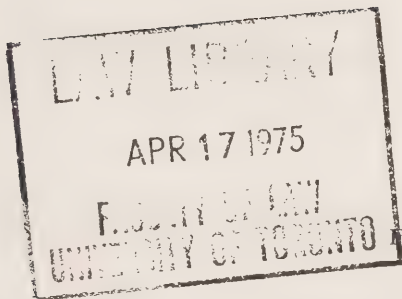
Senator Croll: We can at least thank them profusely for coming. They have been very helpful. The record will be there, and we have all profited, as we hope the people will, too.

The Chairman: Thank you very much.

Dr. Stephenson: May we say that we have profited from the experience as well. Thank you, indeed.

The Chairman: The meeting is adjourned until tomorrow at 2.30, when the RCMP will be appearing before us. The meeting will be in room 356-S.

The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 6

WEDNESDAY, February 12, 1975

Third Proceedings on Bill S-19, intituled:

“An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code”

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Langlois
Buckwold	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Sullivan
Lang	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Senator Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate

Minutes of Proceedings

February 12, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:50 p.m.

Present: The Honourable Senator Goldenberg (*Chairman*), Asselin, Croll, Fergusson, Flynn, Godfrey, Laird, Langlois, McGrand, Neiman, Prowse and Quart. (12)

Present but not of the Committee: The Honourable Senators Benidickson, Bourget, Graham, Heath, MacDonald, McElman, McNamara, Michaud, Norrie, Smith and Sparrow. (11)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee resumed its examination of Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

The following witnesses, representing the Royal Canadian Mounted Police, were heard in explanation of the Bill:

Deputy-Commissioner J. Ross (Criminal Operations).

Inspector G. Tomalty, Officer in charge, Drug Enforcement Branch.

At 4:50 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, February 12, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 2.30 p.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

[Text]

The Chairman: Honourable senators, we will delay for approximately five minutes in order that copies of the opening memorandum may be made available to committee members.

[Translation]

Senator Asselin: Mr. Chairman, I object to beginning the debate without having the French version of the brief, because this will force us to take notes.

The Chairman: Yes, Senator Asselin, but I was asked to explain why the translation is not yet available. The translation service has not had time to finish their work because we insisted on having the RCMP before us today. So we will have the translation in a couple of days.

Senator Asselin: This is a question of principle, Mr. Chairman. I think that, like the majority of senators, you think that the official papers which are submitted to the Senate, or to a Senate committee, should be in both official languages. I do not think that we are setting a precedent today; it is only an accident.

The Chairman: It is an accident.

Senator Asselin: If you can promise me that it will not happen again, I am ready to proceed, if not.

The Chairman: Yes, I have been told that it was really an accident. Do you prefer that we wait for the brief?

Senator Asselin: Considering your explanation, and if we are not setting a precedent.

The Chairman: No, it is not a precedent.

[Text]

Senator Asselin: I am ready to hear the witnesses, but I hope that the next time we will receive the French translation prior to commencement.

The Chairman: Yes. The witnesses appearing today on our consideration of Bill S-19 are Mr. J. Ross, Deputy Commissioner, Criminal Operations of the Royal Canadian Mounted Police and Mr. G. Tomalty, Officer in Charge of the Drug Enforcement Branch.

I will call on Deputy Commissioner Ross. It is your choice, Mr. Ross, whether you or Mr. Tomalty present the case or answer questions.

Mr. J. Ross, Deputy Commissioner, Criminal Operations, Royal Canadian Mounted Police: Thank you very much, Mr. Chairman. We are indeed happy to have been asked to appear before the Senate committee with respect to the proposed legislation. I would hope that Inspector Tomalty will be able to give you a brief summary of the overall drug picture in Canada as it is today, and show you a few charts which might reveal some of the problem areas that have surfaced in the last few years and certain trends in this respect. As a result of this we would certainly be only too happy to attempt to answer any questions you might have after the presentation of the brief.

Please accept my apology, first of all, for not having copies available for you. Unfortunately, we were both away all last week in the United States. We wanted up-to-date information and only finished late last night, so our translation group were not able to have it available for you this afternoon. So, ladies and gentlemen, I hope you will not hesitate to ask anything at all after Inspector Tomalty's presentation.

The Chairman: Inspector Tomalty.

Mr. G. Tomalty, Officer in Charge, Drug Enforcement Branch, Royal Canadian Mounted Police: As Deputy Commissioner Ross has outlined, the Royal Canadian Mounted Police, is pleased to have this opportunity to appear before this committee with regard to the proposed change in drug legislation in respect to cannabis.

Because of the complexity of the illicit drug problem, we thought that it would be of interest and assistance to this committee for us to present a brief historical and national over-picture of the general illicit drug problem in Canada, and of cannabis in particular.

During the past 10 years the illicit use and traffic of cannabis products in Canada has increased astronomically. Prior to the fiscal year 1964-65, cannabis use in Canada was sporadic and mainly confined to the large metropolitan centres of Toronto, Montreal and Vancouver. However, cannabis use rapidly spread and today practically every community in Canada is affected. Prior to 1967, marihuana was the principal cannabis product of abuse, but in that year hashish commenced to grow in popularity, followed by liquid hashish in 1971. It is interesting to note that the THC content in marihuana is approximately 5 per cent, compared with 12 per cent to 15 per cent in solid hashish, and as much as 50 per cent to 65 per cent in liquid hashish.

We have prepared for your information cannabis seizure and arrest statistics for the past ten years which you now have before you. In addition, we have also prepared several charts which may be of assistance in demonstrating the

growth of the illicit cannabis problem in Canada, during the same period.

You will note from the seizure statistics that in 1964-65, only 3.5 pounds of marihuana were seized and that solid hashish and liquid hashish were not present. However, 10 years later—that is, in the fiscal year 1973-74—19,813 pounds of marihuana, plus 6,197 pounds of solid hashish and 99½ pounds of liquid hashish were seized.

As you will note from the arrest statistics for cannabis related offences, the number of people brought before the courts increased from a total of 78 in 1964-65 to 23,171 in 1973-74.

The illicit cannabis traffic patterns and the type of individuals involved have changed considerably during the past 10 years. During the 1960s young entrepreneurs of the so-called hippy generation were the principal persons involved in the illicit traffic and importation of cannabis drugs. However, in recent years organized crime has moved into the cannabis picture, and major organized criminal figures are now deeply involved in the cannabis trade. For example, in 1973, six brutal gangland style murders were committed in Montreal as a direct result of an investigation involving the importation of hashish.

It may be of interest to note the profits which can be derived from a ton of hashish. The trafficker can purchase a pound of hashish in a source country for as little as \$20 to \$25. His initial costs for one ton—2,000 pounds—would be approximately \$40,000 to \$50,000. If the trafficker is successful in smuggling the shipment into Canada he would sell it in one hundred pound lots to local traffickers at \$700 to \$900 per pound. As a result, a one-ton shipment of hashish would bring the importer a profit of \$1 million to \$1.5 million. By the time the one-ton shipment of hashish is broken down and sold in individual lots it will eventually retail on the streets in Canada for approximately \$9.6 million.

Many people have the impression that the traffic in cannabis is somehow unlike that of other drugs; that it is conducted by students and young people for their own use or that of their associates. This is not so. The illicit cannabis traffic is most often a highly organized and well financed venture which nets the trafficker hundreds of thousands of illegal dollars.

One of our most interesting investigations took place in Eastern Canada in 1974, when members of the RCMP located and seized 1,765 pounds of hashish in a seaside cottage and 78 pounds of liquid hashish inside a camper van. The shipment of hashish was believed to have been brought over to Canada by yacht from Lebanon and smuggled ashore and stored in the cottage. Five persons ranging in age from 21 to 25 years of age were arrested. One loaded 20 gauge shot gun and a .357 calibre revolver were also seized.

Investigations of this size and complexity have become commonplace to our drug enforcement units, and yet many people still persist in the view that trafficking in cannabis is a minor crime indulged in by juveniles.

The illicit cannabis traffic in Canada today is a multi-million dollar business that has increased in both size and complexity. Thus, the way in which the public, the judiciary and often times the news media conceives of the cannabis problem is out of date.

It is the view of the RCMP that the illicit traffic and abuse of cannabis products in Canada have taken a more

serious turn in the last three or four years. The shift is clearly towards the abuse of stronger, more dangerous forms of the drug, which has rendered obsolete much of which was said in the 1960s about the relative harmlessness of marihuana abuse.

Although no one can say for certain exactly what role marihuana and other cannabis products play in the ever-increasing multi-drug abuse problem in our country, it has always been the view of the RCMP that cannabis abuse does contribute considerably to multi-drug abuse.

The final report of the Commission of Inquiry into the Non-Medical Use of Drugs, at page 325, states:

Marijuana is often the first illicit drug (other than alcohol and tobacco in adolescence) taken by users of heroin and other drugs.

Because of this factor the cannabis problem in Canada cannot be viewed in isolation, but must be looked at in conjunction with the total multi-drug problem facing this nation today.

The abuse of heroin continues to be a major cause for concern and is the number one priority of the drug enforcement program of the Royal Canadian Mounted Police. We estimate that there are presently approximately 15,000 to 19,000 heroin addicts in Canada.

During the past four years, the abuse and traffic of cocaine has emerged as a significant problem. Prior to 1971 virtually no cocaine was seized in Canada. However, Canadian youths formally involved in the cannabis trade are now combining cocaine with their cannabis activities. In 1971 two ounces of cocaine was seized in Canada, compared with 80 pounds in 1974.

Opium, after an absence of several decades, is again making its presence felt in Canada. The users of opium are mainly cannabis users who combine this drug with their cannabis activities. In 1972 a negligible amount of opium was seized in Canada, compared with 25 pounds in 1974.

In recent years, a very serious problem has evolved in Canada regarding the illicit manufacture and abuse of chemical drugs such as methamphetamine, commonly known as Speed and MDA. Due to the comparative ease with which these drugs can be manufactured and the readily available supply of precursors required to produce them, enforcement agencies in Canada are now encountering an alarming number of clandestine laboratories. During the past two years, 15 illicit laboratories have been located in Canada. One illicit laboratory that was located was capable of producing 25 pounds of MDA per day. This was an exceptionally large operation as the total amount of the chemicals and MDA seized had the capability of producing approximately \$10 million-worth of this drug. As is the case with the other drugs mentioned, many of the persons engaged in the operation of clandestine laboratories were previously active in the abuse and traffic of cannabis products.

While primary responsibility for drug enforcement rests with the Royal Canadian Mounted Police, local, municipal and provincial police agencies have the right to enforce these laws. In 1969 and 1970 the drug problem in Canada reached such proportions that the Royal Canadian Mounted Police encouraged other enforcement agencies to become more actively involved in drug enforcement, particularly at the local level. This policy has proven most beneficial, and has allowed the Royal Canadian Mounted

Police to place greater emphasis on the detection of the high echelon trafficker and importer.

The prime aim of law enforcement in the illicit drug field is to control and reduce the availability of illicit drugs. Although some factions of the Canadian public have expressed the opinion that mere possession of cannabis should not be considered a criminal offence, the Royal Canadian Mounted Police strongly advocates the retention of an offence for illegal possession. A possession offence is an absolute necessity if we hope to retain any sort of control over the illicit drugs that are available in this country.

Furthermore, it is felt that a possession offence acts as a deterrent and, if it were eliminated, many persons, who would not ordinarily become involved in the use of illicit drugs, would be easily persuaded or conjured into using them. It is the opinion of the Royal Canadian Mounted Police that the national health of the nation would be endangered if possession of a drug such as cannabis was removed as an offence from our drug legislation. As previously stated a great many cannabis users do not restrict their activities to one drug, but progress to stronger and more dangerous chemicals and narcotics. The elimination of a possession offence would also be contrary to the drug control philosophy of the United Nations.

With respect to the proposed cannabis legislation presently before the Senate Committee, the Royal Canadian Mounted Police are pleased that the general control provisions, including the offence of illegal possession, have been retained. The penal provisions for illegal possession and trafficking appear to be in accordance with the gravity of the offences. However, we do not concur with that portion of section 50(2) which states that, "subparagraph (b)(ii) does not apply where that person, after having been found guilty of the offence, establishes that he imported or exported the cannabis for his own consumption only." It is the view of the RCMP that it is extremely difficult for the court to decide, with any accuracy, the amount of marihuana that can be consumed by one person over a period of time. For example, a known trafficker could be apprehended in the process of importing 10 lbs. of marihuana, and his defence would simply be that he consumes 12 grams per day and that this is his yearly supply. Or it could be 50 lbs. involved, and his evidence would be that it was a five-year supply. How much liquid hashish is enough for ones own personal use? It might be mentioned that it is the present policy of the Royal Canadian Mounted Police to lay a charge of simple possession when a person is found entering Canada with a minimal amount of illicit drugs in his possession unless, of course, the circumstances indicate the need for the more serious charge of possession for the purpose of trafficking or importing. We are of the opinion that section 50(2)(a) of Bill S-19 provides sufficient leniency for minor importation offences. The Crown prosecutor should be allowed to exercise his discretion when the quantity of drugs seized is a minor amount and the accused is not a previously known drug violator or trafficker.

The RCMP view cannabis abuse as posing a serious threat to Canadian society. Its widespread acceptance by segments of our society coupled with the myth that it is a harmless herb are very real causes for concern. The tendency of cannabis users to become multi-drug abusers is also a cause for worry. It is our conviction that any attempt to decriminalize cannabis would be detrimental to the well-being of our society.

I would now like to take the opportunity to show you several charts that demonstrate the growth of the cannabis problem during the past ten years along with a comparison of the illicit heroin problem.

The chart which is on your left as you look at these charts represents the cannabis seizures, including marihuana, hashish and hashish oil from the 1963-64 period through to the present time. The red line represents the amount of marihuana seized. The green line up to 6,197 represents the solid hashish seized, and the slight blue line starting in 1970-71 to 1973 represents the amount of liquid hashish seized.

In order to have a full appreciation of what this represents, we converted what would be the THC content in these seizures so that you could have a proper view of how much actual THC, which is the active ingredient in cannabis, was smuggled in.

On this chart, as you will note, the red line representing marihuana is going up. The green line is hashish and the blue line takes on more significance, because now it represents pure THC content in the seizures because liquid hashish contains as high as between 45 per cent and 55 per cent THC in content. This gives a truer picture of the amount of active ingredients of the chemical that were being smuggled into the country during the time frames that are shown on these charts.

The chart on the left indicates the increase in the number of persons arrested for possession of cannabis. The chart on the right represents the number of persons arrested for trafficking in cannabis products.

The statistics on this next chart are obtained from the Bureau of Dangerous Drugs from the Department of National Health and Welfare. They represent the reported number of opiate addicts on record. As you will note, there is a climb from the 1969-73 period. The figures which are represented below the line are the number of individuals under 20 years of age who are involved with opiates.

Senator Langlois: Would you mind reading the figures? We cannot read them from here.

Mr. Tomalty: Starting with the figures on opiate addicts, the figure on the left is 3,180, of which 37 were under the age of 20 years in 1965. This has risen in 1973, the last figures in the 1973 period, to 10,250, with 709 under 20 years of age.

I have now placed on overlay for heroin possession offences on the chart on the left, giving an indication of how the arrests involving illicit possession of opiates evolved during this same time frame. On the right of this chart the overlay is of those persons charged with trafficking in heroin during the same period of time.

That, senator, concludes our presentation.

The Chairman: Thank you. I am going to call on senators in the order in which they raise their hands. If a senator has a supplementary question I hope he will direct it to me, or wait until I have heard the senators whose names I will have listed. Senator Laird.

Senator Laird: Mr. Chairman, the last part of the presentation prompts me to ask either Mr. Tomalty or Mr. Ross what attitude they would have on a rather interesting suggestion made to us yesterday by the Canadian Medical Association, namely, that they would like to see mere possession retained as an offence, but not to have a conviction.

tion a matter of record; in other words, so as not to affect the future for a young person who wanted to get a job, get a bond, cross the border, and so on. What would be the effect on your enforcement if, for example, such a change were made?

Mr. Tomalty: In reading this bill you will note that there are provisions for first and second offences. I think you have to keep some record if you are going to have first and second offence clauses in your bill. Secondly, we have, within the provisions of our criminal justice system, the ability to apply to have the criminal record expunged after a period of time. In my opinion that is part of a control mechanism that acts to deter people from becoming involved in, or having any association with, the stigma that is attached to the use of drugs, and that stigma is a very viable element in deterring individuals from becoming involved, because it represents complications in their lives.

Senator Laird: Well, their argument, of course, was that you have to weigh that against the unfortunate effects it would have, if there were a conviction, on a young person's future activities; but I can see that apparently you do not agree with that. By the way, they also indicated that the procedure available for expunging a conviction was of such a nature that it discouraged people from talking advantage of it.

Mr. Tomalty: Maybe that is where we need to tailor it.

Mr. Ross: I think that is a very valid point, that there is a kind of conflict between the Criminal Code provisions at the present time and the Criminal Records Act. There is something of a conflict there, and I would hope that perhaps some study could be made in this connection to see if the differences between the two could not be ironed out, and a decision made as to which could be the more effective vehicle.

Senator Laird: That is a very helpful observation.

Now, just one more question. The Canadian Medical Association witnesses were all agreed on the proposition that hash and hash oil were really, for enforcement purposes, in the same category as marihuana. In other words, they said it becomes a matter of whether or not you smoke a marihuana cigarette, or whether you take, say, hash oil, in the form of a single drop which of course, being concentrated, would produce the same effect. Therefore, they said, the treatment should be the same for hash oil, hashinsh and marihuana. What do you feel about that?

Mr. Ross: I am afraid it would depend on how the concentrated dosage there was weakened. I think most of the persons who would be using it would very seldom want to weaken it substantially from its original state, if it was oil, or something of this nature, and I would say that I doubt whether sufficient medical research has been done in this connection at the moment to substantiate what particular damage it does. I believe there has been quite a bit of research and study on the effects of a marihuana cigarette, and this type of thing, but I do not think there has been sufficient research done on the other elements of it.

Senator Laird: Their argument was that if you use alcohol as a parallel it can, of course, be taken in very concentrated forms. They said that if you take a drink of whisky straight, as against taking a tall glass containing a

bit of whisky and mostly water, it is all part of the same deal, and should be treated in the same way.

Mr. Ross: Well, I am no medical person, and I do not even profess to be, but I do know that even in alcohol we have quite a few victims who have overindulged, and who end up on a slab as a result. I am sure the same thing would be equally applicable to relative strengths in certain drugs. Again, as I say, I am not a medical practitioner.

Senator Laird: You do think, then, that perhaps this bill should treat marihuana separately from hashish and hash oil.

Mr. Ross: I think the bill itself, as it reads, is fairly good. The provisions dealing with trafficking and possession, and those aspects of the bill, are excellent, in that they still allow freedom for the investigational people to go ahead with their investigational work, and for the prosecutors and the courts to deal with it in an applicable manner. I therefore think that as the bill reads right now, we really have no dispute with it whatever, except for that one section; that is, 50.(2) (b) (ii).

Senator Laird: But what about mere possession? Should there be a differentiation between marihuana and the other derivatives?

Mr. Tomalty: I definitely do not think so. We are dealing with THC, irrespective of the form in which it is carried into the body, or ingested, and our society, in drug legislation, is attempting to set up controls so that individuals do not indulge in the use of THC. In our system it is, for one reason or another medical, social or otherwise considered dangerous to the individual and to our society to do so. Therefore our society has chosen to legislate to prohibit it, and I cannot see that it matters very much whether it comes into your system through a marihuana cigarette, by smoking hashish, or in the form of liquid hashish.

Senator Laird: You are satisfied with the bill on that point, pretty well?

Mr. Tomalty: Yes.

Senator Prowse: With the exception of just that one point.

The Chairman: We will come back to that point.

Senator Langlois: Mr. Chairman, I have a question and it is supplementary.

The Chairman: If it is supplementary, will you go ahead?

Senator Langlois: When my colleague on my right here referred to the recommendations made to us yesterday by the Canadian Medical Association, he failed to draw attention to the second part of the recommendation, which read as follows—and I am quoting from the press release of yesterday by members of the association:

Failing the realization of that objective, we hope the Senate, and/or the House of Commons, will make provision for the automatic erasure of the criminal record for those found guilty of simple possession for personal use after a two or three year 'charge free' probationary period.

Will not the second part of the recommendation meet the objection of the establishment of a criminal record, and

permit the court to deal adequately with second offenders? The period of two or three years would permit the record to be created, and the court would have the benefit of that record at least for a certain period. Would you be prepared to accept the second part of the recommendation?

Mr. Ross: I do not really see any problem to it because what we are concerned with is, of course, the abundance of drugs and the traffickers and the problem area itself. We really have not seen too much of the second offence coming forward here, and if we do it is normally those people who are trafficking. So I would suggest that really the provisions of the Criminal Records Act as they exist today follow pretty well the suggestion that was advanced in the second part, anyway, where a person could ask to have his record expunged.

Senator Godfrey: I have one supplementary question to ask first of all, Mr. Chairman. This follows from Senator Langlois' question. Do you see any objection to making it an automatic expungement after two or three years rather than having to apply under the Criminal Records Act?

Mr. Ross: I think where I do see a conflict here is, as I have already mentioned, with the Criminal Code and where a magistrate or the judiciary by the Criminal Code is actually supposed to have a certain degree of leniency. But there is a conflict as between the Criminal Code and the Criminal Records Act whereby several members of the judiciary now feel that by the Criminal Code they have the right to do this as they examine each individual case. Unfortunately, the Criminal Records Act is in conflict with this. I think that if this is rectified in some way the court itself would have the facility of deciding that there should be no record right then and there as the case is being decided. I think that is a far better method and manner in which to do it.

Senator Godfrey: I should like to ask a question about your recommendation in respect of the last part of section 50, subsection (2), which apparently you object to. Are you not really suggesting there that the RCMP or the Crown attorneys should take the decision as to whether an importer, for example, is bringing it in for his own use or is trafficking, and that that decision should be taken away from the courts?

Mr. Ross: In the present procedure and the way it is introduced into our court system now the evaluation is done by the Crown prosecutor long before it goes to the court itself, and in most cases if it is a case of simple possession, or in the case of importing if it is a minor amount, I can assure you that they are going to proceed by way of summary conviction. In almost every instance it would be a proceeding by way of summary conviction. But where a major amount is involved, and this is where a problem could arise in this area, you can say, "Okay, what is the court going to determine as a major amount in there?" And you are going to present each magistrate or court official with the situation where he is going to have to determine whether it is a year's supply and what he is going to base it on, whether it is a two years' supply, five years' supply, two weeks' supply.

Senator Godfrey: But why should the Crown attorney make that decision instead of the judge?

Mr. Ross: I think this judgment is already being made as it presently exists, and I do not think we have had any major problems with it as it is today. That discretionary

power is being exercised, I think, very well by the Crown prosecutors, and the prosecutors used in major drug offences are the same people. So there is a consistency. But there is not a consistency within the court system because the person charged has to appear in the area where the offence took place. But there is a consistency with the prosecutors and they are aware of the background and the drug problems throughout.

Senator Godfrey: This is very interesting because it would follow that the simple university student who comes in with half a dozen joints in his pocket does not go to jail for seven years under the present system.

Mr. Ross: Well, on summary conviction, as it reads in there, subject to summary conviction it provides a term of not more than two years.

Senator Godfrey: But under the present act where it is a minimum of seven years, in fact they are not charged.

Mr. Tomalty: We do not charge them. I might add that some of the things about the legislation, whether it intends to do so or whether it does not intend to do so, might leave the impression that we do not consider the importing of a drug into this country as a very serious offence as long as it is for your own use, and that we will allow you to do it and only treat you as such. But I think the law should speak out and say that importation, under the circumstances, is a serious offence and it has been treated seriously throughout this whole act. The maximum sentence for importing is 14 years whereas the maximum sentence for trafficking is 10 years. So it is looked upon as a more serious offence, and I do not think that anything should indicate to the public that importation, even for your own use, is considered to be a lesser offence. The control should be there. It should stand as a signal to people.

Senator Godfrey: I want to go on to another line of questioning so it may be that somebody has a supplementary to ask at this stage.

Senator Laird: May I ask a supplementary? As a matter of fact, the bill proposes a heavier penalty for cultivation, as you will probably have noticed, than presently exists. Do you consider this to be a good feature of the bill?

Mr. Ross: I would say we have had indications of cultivation in the last few years, and I would certainly agree that everything should be done to try to keep it from becoming a serious problem in Canada. There are certain areas in Canada that would be fairly good for cultivation.

Senator Laird: Has it increased, as far as you know?

Mr. Ross: Yes, certainly, but it still is not a major problem yet.

Mr. Tomalty: I can only point out with regard to cultivation that if it is cultivation on a minor scale like a flower-pot type of production, then it is considered as possession and has the same punishment under summary conviction as there would be for simple possession. But for cultivation on a large scale it is considered the same as having it for trafficking, and so it would be considered in that light.

Senator Godfrey: I have had it suggested to me that because the offence has been lessened for simple possession the RCMP will now concentrate more on the traffickers, where they probably should, and not so much on the people who have simple possession, and therefore you will be more effective. What will be the practical effect?

Mr. Ross: Well we certainly have been attempting to do that in the last few years, and this thing has an element of that too. In the last few years we have been trying to have the drugs seized before they ever come into the country and we have an ongoing program whereby drugs were seized before ever reaching here. We have been attempting to dry up the sources of drugs actually coming into the country, and most of our resources are primarily directed against trafficking and trying to prevent the drugs from ever coming into the country.

Senator Godfrey: I am just asking if there will be any change, any more resources in the future, in respect of trafficking, if simple possession is only an offence punishable by a fine? I am talking about the percentage. You have only so many men.

Mr. Tomalty: We have drug enforcement squads—specialized drug enforcement personnel. With the explosion of the drug problem, say prior to 1964-65, all drug problems, irrespective of what they were, were referred usually to a drug squad—the same as you would have a homicide squad or a breaking and entering squad—but because of the numbers that became involved, and especially in possession of marihuana, it became quite evident that specialized drug squads alone could not handle the problem.

What we look for, for law enforcement to play a meaningful role in the drug control complex, is that every police officer, irrespective of what police department or the type of duty he is performing—the highway patrolman, the man riding the motorcycle, the man giving out parking tickets, or the homicide investigator—be conscious of the drug problem and be prepared to take action whenever he encounters a drug violation, without having to call in drug squads.

This started in 1969-70 and has been an ongoing program. Now all police departments are making possession a risky offence, whereas in the past a beat policeman may, through ignorance, in not recognizing or not knowing a drug, or because he did not want to become involved because it was a drug squad responsibility, is prepared and is taking action. These large numbers of arrests which you see for possession are primarily as a result of total law enforcement response to the increased drug problem, not to the specialized drug squads. The specialized drug squads are concentrating on the importers and on the national and international traffickers within our country.

[Translation]

Senator Asselin: Mr. Chairman, I would like to know if in the course of your professional activity you have had statistics revealing, as we see on this chart here, how many people were arrested and convicted for temporary possession of hashish or marihuana?

[Text]

Mr. Tomalty: Do I understand the question to mean for possession of marihuana?

Senator Asselin: Possession—arrested and convicted.

Mr. Tomalty: We do not keep statistics on convictions, but the Bureau of Dangerous Drugs of the Department of National Health and Welfare publish them annually. I am sure they can easily be obtained from the Bureau of Dangerous Drugs. Our statistics, as you know, are on the

number of persons arrested. Our figures are on that basis. They keep the figure of convictions.

[Translation]

Senator Asselin: Am I wrong in asking you if the number of arrests for possession has considerably increased since 1964?

[Text]

Mr. Tomalty: For possession of marihuana? Yes, sir. The chart that I have here represents possession arrests from 1964 through to the present time, that we have records for. As you can see, there was a sharp increase, particularly in the seventies.

Senator Prowse: Could you read the figures, please?

Mr. Tomalty: In 1970, for example, there were approximately 4,000 to 5,000 persons charged for possession of marihuana or cannabis offences, and in 1973-74 there were 20,179.

Senator Langlois: Could the witness give us the batting average of these charges?

The Chairman: He said they did not keep a record of convictions.

Senator Langlois: The batting average—a ball park figure.

Mr. Tomalty: I do not have that answer.

Senator Langlois: Not even an approximation?

[Translation]

Senator Asselin: In the course of your work as a member of the RCMP, obviously, you are there to enforce the law. The next question I will ask you is the following: When you enforce the law, do you take into account the possibilities of rehabilitation, especially as far as are concerned the young people who are arrested for temporary possession? Please allow me to give further explanation. If you catch one youth for temporary possession, let's say for one joint, do the members of your police force immediately arrest him for temporary possession or will they only give him a warning, especially if your records show that it is for personal temporary use and not for traffic? In one word, I would like to know if in the course of your work you constantly and rigidly apply the law, or if you do not also attempt to rehabilitate a youth who has been unlucky to be caught by the police when, temporarily, he was smoking marihuana cigarettes or anything else?

[Text]

Mr. Ross: If I might answer that, there certainly is a discretionary power that I hope policemen always utilize. I do know, from personal experience and from having been vitally concerned with this aspect of law enforcement, that this discretionary power is exercised wherever possible. I do know there is a difference in certain regions of the country where this is applies, because the discretionary power, and this type of thing, in some cities where they have had drug problems for a number of years is perhaps exercised far more than it is in those areas where they have had no drug problem before and all of a sudden a few people become involved with drugs. I think there, in that

environment, the policeman perhaps takes a stronger stance because no drug problem existed there before.

The public the parents and everyone else are saying. "Do something about this. We don't want our children involved". So you do find, and we have found perhaps over the last five or six years, that the discretionary power of policemen is perhaps not exercised on a standard basis. Where the drug problem has been in evidence for a long period of time, I think you will find that the majority of policemen actively working on drug enforcement will certainly use discretion and exercise it. I can assure you the figures would be tripled or quadrupled on the arrest pattern if discretionary powers had not been exercised.

[Translation]

Senator Asselin: As you know, and I think that many senators have talked about this since the beginning, it is a matter of criminal records for the young people who are caught for temporary possession as was explained a while ago by the senator who raised the issue.

We have asked questions to the minister on this matter when he appeared before the committee. He told us that the Cabinet was not ready to recommend pardon for the young people who already have a criminal record because of temporary possession. But as police officers, and according to your experience, in view of the consequences for young people of a criminal record and following the presentation of the brief yesterday by the Canadian Medical Association, would you recommend that the government, the Parliament or the Senate submit a measure that would give pardon to all those who have criminal records for temporary possession and that from now on, the person convicted of temporary possession would not be stuck with a criminal record for a first offence.

[Text]

Mr. Ross: They have a facility available to them now, if it is a problem to them. I do not know just how many would be affected by a simple possession charge, but there is a vehicle by which they can ask now for a pardon.

Senator Asselin: But it takes a long time, sometimes two years.

Mr. Ross: About two years, yes.

Senator Asselin: That is a long time for a young man to get his dossier clear.

Mr. Ross: What I would suggest, as I have before, is that perhaps it needs an examination of the criminal Code, and also the Criminal Records Act, because I think many of the judiciary now feel that they have the discretionary power invoked here. I think legislatively the imbalance there should be examined between the Criminal Code and those specific sections as they relate to the magistrate effect and the Criminal Records Act. I think this would be the proper way to examine it.

Senator Prowse: Is the conflict between the Criminal Code provisions for giving an absolute discharge and the procedure of their being fined, or whatever it is, and then making the application, when it then goes to the Parole Board?

Mr. Ross: That is right. There is a little conflict there between the kind of absolute discharge and the Criminal Records Act.

[Translation]

Senator Asselin: Mr. Chairman, if we look at the table of statistics that were given by the witnesses concerning the quantities of marihuana seized since 1964-1965, we see that in 1964-1965, 3.5 lbs. of marihuana were seized and in 1973-1974, 19,813.6 lbs. If we also look at the other page attached to this brief and entitled "Number of persons charged", we immediately see that in 1964-1965, 62 persons were accused of possession and in 1973-1974, obviously, I am not giving the complete list of the years indicated, there were 20,179.

According to you, given these statistics figures, will the law before us improve the situation?

[Text]

Mr. Tomalty: The present bill, as it is written, does not really change the legislation as it was in the Narcotic Control Act to any great extent, except to reduce some of the penal provisions. I cannot see how you could say the bill will provide any magical solution in itself towards the general drug problem. I would have to say no, I do not think there will be any change, because I do not think the bill itself will make any change over what the Narcotic Control Act can do.

[Translation]

Senator Asselin: But the bill itself decreases the penalties.

[Text]

The previous bill was more vigorous, more drastic.

Mr. Tomalty: That is right.

[Translation]

Senator Asselin: If the present bill decreases the penalties, according to you, will the statistics that we have for 1973-1974 increase or decrease?

[Text]

Mr. Tomalty: That is a hard one to guess ahead on, what will happen in the future. A lot depends on the circumstances of the supply and availability of the drug. I do not think we will see the marked increase in arrests that we witnessed between 1970 and today, because I think a lot of these arrests are directly responsible to two factors: first, the increased use of the drug; secondly, the increased law enforcement response to the problem. I think the problem may be levelling off, as to the number of people as a percentage of our population who are abusing it, but it is levelling off at a very high number.

Senator Prowse: I have a supplementary question that I think may be helpful. Is the situation not this, that prior to, say, 1965 or 1967 if the city police at Edmonton, for example, came across a drug charge they would immediately phone the RCMP special squad; they did not really consider themselves to have jurisdiction?

Mr. Ross: That is right.

Senator Prowse: Therefore, once you brought the other people in, you had, in effect, about ten times as many policemen working on drugs than you had before, or maybe even more.

Mr. Ross: Yes.

Senator Prowse: That is what happened; that explains the figures partly.

Mr. Ross: Again I think this is why you have a greater proportion of people charged with possession, because over the same time frame the usage spread from, say, three major centres in Canada where the major problem was; it spread across Canada to a lot of the smaller communities. As a result of this you have had more policemen involved, and the simple possession charges show quite a rise in number. I do not think the problem area in drug abuse has grown to the proportion shown on the graph. I think the enforcement of it has gone up sharply.

Senator Prowse: The changes we are recommending will really give more flexibility to the court itself to deal with the case in front of it.

Mr. Ross: That is right.

[Translation]

Senator Asselin: One last question, Mr. Chairman, with your permission.

The Chairman: Yes, Senator Asselin.

Senator Asselin: Obviously, the figures you mention show the number of persons who were arrested for possession.

I think it would be right to say that there are hundreds, thousands of persons in Canada who use marihuana and hashish and that when so many people violate the established law, as I said in the House, I think that the legislators must change the Act. When a great percentage of society does not observe the Act any more I think that the Act must be completely changed or amended. I said it in the Senate and I repeat it this afternoon.

Don't you think that, if the government decided to legalize marihuana while maintaining control over sales, production and traffic he would do more to protect society, firstly with respect to quality. This would considerably reduce the number of dealers because they would realize that there is no more profit in the trade. Do you not think that if in the future, we completely change the Act to legalize the use of cannabis, as some countries are considering to do, this would definitely settle the problem?

[Text]

Mr. Tomalty: It is up to our society to decide whether or not they wish a person to indulge in alcohol, cannabis or heroin, let us say. I agree with you that once the decision is made we cannot have legal possession and illegal sources of supply. It just does not fit. So if it is decided to legitimize it the state must go the whole way and supply it. Otherwise, if we were to attempt to control it and prevent—

Senator Asselin: By selling marihuana and hashish the state would control it at the same time.

Mr. Tomalty: This then becomes a choice, I submit, not of law enforcement, but of public health, as to whether or not the use of cannabis on a wholesale scale in our society is beneficial or detrimental to that society. It is there that the decision must be made and it is not then a law enforcement problem.

Senator Croll: Is it not a fact that we now control liquor better than we did when it was illegal?

Mr. Tomalty: Are you saying, senator, that there are less alcoholics, less social problems related to alcohol now than during prohibition?

Senator Croll: You see, you are falling back on a tough attitude. I have no percentages, but I remember and the figures exist. However, I believe it is generally known and it is a question which ought to appeal to both of you, who are experienced.

Mr. Ross: Senator, I will definitely advise on one aspect of that: It was humanly impossible for law enforcement agencies to handle the problem of the prohibition of alcohol. There is no question about the fact that it was humanly impossible at that time to maintain control. Therefore it was legalized.

Senator Croll: Allow me to follow up and go one step further. Here you had an efficient department, an able department, the best equipped department, full of confidence, with one of the toughest laws in the country, and you come here today and say it does not work.

Mr. Ross: Maybe we had better just examine certain aspects of this. We did not have the manpower; we did not have the problem really, if we look at it back when we started the statistics in 1963. Technically the problem commenced seven or eight years ago. Now, we did not all of a sudden acquire massive resources and equipment. We are not able to handle the situation. However, right now we are in a better position to handle it, because we have over the last two or three years employed quite a few resources in connection with this particular problem. In my opinion we are making headway with it and I think there is not the same relevance between the drugs picture and alcohol as many would have us believe. I just do not believe that it is the same serious problem.

Senator Croll: Do you mean whether alcohol is the same serious problem?

Mr. Ross: Yes, as the drugs.

Senator Croll: Well, Deputy Commissioner, all these people were here yesterday. We had a very responsible man—Solursh, I believe was his name—a reputable man in the medical profession, stand up and say not only is it serious, but many, many times more serious. The man stood up under questioning; he was an honest man.

Mr. Ross: I am speaking about the problem—

Senator Prowse: —of enforcement.

Mr. Ross: Not so much enforcement as the number of people who use the drug.

Senator Croll: Yes, but you say you have been fairly well equipped in the last three or four years, and your problem in the last couple of years is horrendous according to these figures that were circulated—such as marihuana, 8,000 pounds.

Senator Prowse: Ten tons.

Senator Croll: Despite all your equipment the problem seems to grow larger and larger.

Mr. Ross: I am suggesting that we were not capable of handling the problem; it sprung upon us. A lot of this drug

may be entering the United States and we can be a transit country in this respect. I do know that several statistics have developed as to how many smoke marihuana and use drugs, many of which in my opinion are not as factual as they might have been. I have personally discussed the problem with several groups, members of which admitted using marihuana. After half an hour or three-quarters of an hour of general discussion as to what should be done about the problem I asked everyone who had utilized drugs to raise their hands. A questionnaire had been circulated and they said they all entered their names. I observed that this was most interesting but two or three of us seemed to be the only ones who were smoking there. I asked them if they meant they smoked much and the response was that they had only one puff. So, again, in my opinion the statistics have been a little misleading as to the great, great numbers utilizing it. I am not saying we do not have a major problem, but I do not think it is quite the problem that a lot of statistics would indicate it to be.

Senator Croll: Perhaps I can follow that up for a moment. Agreeing with you for the moment in your request for a continuance of a pretty tough law—and I will get back at it on another aspect in a moment—is our law tougher or weaker than the New York State law?

Mr. Ross: I think our law is more or less equal with that of New York State.

Senator Croll: I think it is, too.

Mr. Ross: It is reasonably equal.

Senator Croll: Yet, the New York law has been a total failure, to the point where the governor has declared he will amend it. I do not know in what fashion he intends to amend it, but it has been a total failure. With that in mind, you still say that we should continue with such a tough law in this country?

Mr. Ross: Well, the difference between New York and our Canadian cities is that New York had a drug problem long before we ever had one and it is at the point now where it is completely out of control. I think there is a far different climate in New York than there is in our Canadian cities. Hopefully, the citizens of our country are quite a bit different than you might find in some American cities.

Senator Croll: Well, without casting any reflections, where we have the greatest number of users in Canada would be British Columbia, would it not?

Mr. Ross: The greatest number of heroin users would be in Vancouver.

Senator Croll: And comparing it any way you wish, the conditions in Vancouver and New York are the same, are they not? In other words, Vancouver has had a drug problem for a good many years, although in a smaller way, as has New York, and yet you have the same sort of law.

Mr. Ross: I think the conditions of drug abuse in New York are far, far greater now, and have been over the years, than those which would prevail in any Canadian city.

Senator Croll: In any event, you agree that the law in New York State has not served to alleviate the drug problem?

Mr. Ross: I do not know. I have no recent knowledge of the State of New York changing its laws. I do know there

is a major problem of enforcement in New York. There is no question about that.

The Chairman: Senator Neiman had a supplementary question, and she will be followed by Senator Benidickson and then Senator Prowse.

Senator Neiman: Mr. Chairman, I should like to get back to what we were discussing a moment ago in terms of numbers, literally, as revealed on the chart. You indicate on your chart something over 20,000 arrests for possession. Possession and how to deal with it is, I think, the major concern of this committee and of many people. Senator Croll analogized it to the problem we had with liquor, and still do, going back to the time when we had prohibition in Canada. Your statement, Mr. Ross, was that it was humanly impossible to deal with the alcohol problem during the period of prohibition in terms of numbers, and that we have a somewhat similar problem today as far as cannabis is concerned.

First of all, you talked about arrests. We have had testimony before this committee that about one million people will try cannabis this year. Of course, you mentioned the type of persons you feel these will be—the person who puffs on a marihuana cigarette, uses it once, just to see what it is like. However, under our present law that is a criminal offence. Whether you try it once or many times, it is a criminal offence. I suggest to you, from the Le Dain Commission onwards, we are talking about substantial numbers of people who use it, perhaps not on a regular basis, or to any great degree, but we are talking of approximately one million Canadians who are going to try cannabis this year.

If we are thinking in terms of a social problem, how can we reconcile the fact that we are only going to charge and arrest approximately one-fiftieth of the people involved with this criminal offence, and how can you deal with that? How can you deal with that problem fairly? It is humanly impossible, as you said.

Mr. Ross: First of all, I do not agree that we have a million people in Canada who will smoke marihuana this year.

Senator Neiman: Well, let's take half of that.

Senator Godfrey: Let's take his estimate.

Senator Neiman: I know we have some university students sitting in this room at the moment. Would you concede that perhaps one-third of the population of a given university, including students, teachers, and everyone else in that university, have probably tried marihuana, and maybe a good proportion of them use it from time to time today?

Mr. Ross: I do not know. I think a few years ago it might have been a little more relevant. Even two or three years ago, I think there was a greater trial period within university complexes than there is today.

Senator Neiman: I am not talking about trial periods. I am not talking about those who puff on a marihuana cigarette to see what it is like. I am referring to those who use marihuana on some sort of regular basis. If we retain this as a criminal offence, to make the law fair do we not have to punish all offenders equally?

Senator Prowse: If they are caught.

Senator Neiman: Yes.

Mr. Ross: Of course, the same thing applies with our liquor laws and other laws. I cannot see how that is valid, as you would have it appear to be, in that there are a good many conflicting liquor laws in the statute books of the provinces of Canada. I think there is a major deterrent value as long as—

Senator Neiman: But Inspector Tomalty, when pinned down, put it on a social basis, the social value to the community, whether it is liquor or marihuana. What social value is there in punishing one-fiftieth or one-twentieth of the offenders, all of whom come out of a fairly easily defined segment of our society? In other words, it is my belief—and I hope you will correct me if I am wrong—that the people who are liable to be arrested and charged with this type of offence are not the people attending our universities, not the doctors or the lawyers or the blue collar people, or anyone else, who sit back on a Saturday evening and try marihuana, but the kids on the streets and the people who come under the eye of the law enforcement officers for other reasons, the people in the pool halls, if you like. It is that segment of society that is being punished for this particular offence. I do not see any social value in punishing one segment of society under this law.

Mr. Tomalty: May I just respond to that. First of all, this legislation is not a punitive legislation. It is a piece of national health legislation which is designed to protect the health of Canada. Otherwise it would be Criminal Code legislation. It is not punitive. It is for control, and to protect our society at the present time, and it is considered by people who schedule the drug that this is a dangerous chemical for society to have free indulgence in. The purpose of the legislation is not to catch people, it is not to punish people, but it is to control a certain activity of some segment of our society and to prevent it from getting so big or expanding to the point where it would hurt the total social order in which we live.

The same argument could be taken if you want to talk about heroin. How far can you follow this argument when you are talking about chemical indulgences? I say the question to be asked and answered is this: Is marihuana or cannabis or any of the products serious enough to warrant this type of social control? That is for somebody to decide besides the law enforcement officers. We will enforce whatever legislation our government passes. We are just saying that if you want us to control availability, then we need a possession charge. If you do not want us to control availability, then legalize it. I think it comes down to as simple a statement as that. This is control legislation.

Senator Neiman: I will come back to that point later on, but, if I may just make this comment, we had expert opinion yesterday as to other types of drugs that are equally harmful, some of which are sold across the counter, and they are not controlled with this type of legislation. But apparently they are equally, or more, harmful to the users.

Senator Godfrey: But in much greater dosages.

The Chairman: Senator Heath.

Senator Heath: First, I must say that I see with alarm that I am the "one man contingent" from British Columbia. We need help!

Perhaps Inspector Tomalty could explain this paragraph on page 4 of the brief:

Opium, after an absence of several decades, is again making its presence felt in Canada. The users of opium are mainly cannabis users who combine this drug with their cannabis activities.

Just by way of clarification, does this mean that there are people who are combining cannabis and opium as a drug and taking the two together?

Mr. Tomalty: No, it is an example of a multiple drug problem. The same individuals will not take them at the same time, but as part of their life style they are also having their physical well-being affected by cannabis at one time and opium at another time. I don't think they would smoke cannabis and opium at the same time. I am not sure just what that would do.

Mr. Prowse: Take one Friday night and the other Saturday night.

Senator Heath: Would the ramifications of that then be in the trafficking, too? Would there quite likely be a combination trafficker in cannabis and in opium? Does that necessarily follow?

Mr. Tomalty: No, I think it just points out that there is a multiple drug use problem in our society now; that it is not simplistic that people are staying just to cannabis abuse. There is a great mixture of drugs and drug abuse going on in our society. You do not find just cannabis users, heroin users, cocaine users. There are people trying the wide spectrum of drugs now. Therefore, I say that you cannot view cannabis use in isolation. You must look at it in terms of the total picture of drug abuse in our country.

Senator Prowse: Would you say that the general picture, then, is that where you find one drug you invariably find the others?

Mr. Tomalty: It depends on the community again. In some communities you may find just cannabis—for example, in some smaller communities where there are not that many individuals. It is quite prevalent in the larger communities, in the larger metropolitan areas, to find the widespread availability of all the drugs—the cocaine, the heroin, the cannabis, the methamphetamines. LSD is also becoming prevalent again.

Senator Heath: Mr. Chairman, if this question is inappropriate I hope you will rule on it so that our witnesses are not embarrassed by it, but I would ask them if there is anything they can say about the possibility of a mass use of drugs in our country being a weapon of a foreign country. In other words, could a mass use of drugs be used as a form of subjugation, if you like? Is there any comment you can make on that, or is that quite improper for me to ask?

Mr. Tomalty: My experience in dealing with international agencies and the sources of supply is that the countries that are usually the sources of supply would not necessarily line up on the side of the fence we would necessarily consider our arch enemies. In fact, some of our so-called good friends are our sources of supply, too. So is Canada at the present time, I am sorry to say, when you consider the manufacture of illicit chemicals. At one time we could sit back and point the finger at other countries and say that they were responsible for our problem because they were supplying us with the drugs. That is not so any more. We are now making our own chemicals, such as methamphetamines, speed and MDA. We are no longer just the victim country; we are the producer country.

Senator Sparrow: For export?

Mr. Tomalty: For export, yes.

Senator Heath: In view of Senator Laird's question about the severity of cultivation and importation and so on, I was wondering why the only place where the term "marihuana" is used in the proposed bill is section 51 (1), which is strictly with regard to cultivation. I was wondering if perhaps that was a trap for the unwary. Why would it not be referred to as *Cannabis sativa* L.? Is there any reason for that?

Mr. Tomalty: I am not sure who the composer of the legislation was, but in the definition part you will see that "marihuana" means *Cannabis sativa* L." So they tie it in. Where they use the word "marihuana" it means "*Cannabis sativa* L."

Senator Heath: But in Part V that is the only place that it is used.

Mr. Tomalty: Marihuana is thought of as the growing plant. Cannabis resin or cannabis hashish or liquid hashish is a product which has been made. So you would cultivate a plant as opposed to making the others.

Senator Heath: What if you were involved with having people present the evidence in such a way that the charged person should be convicted. Could that not be a trap?

Mr. Tomalty: Marihuana means *Cannabis sativa* L. It is crossed over in the definition.

Senator Heath: But that is the only place in that part that it is used. I don't really know why.

Mr. Tomalty: I am not sure who drafted it or the reason why it was incorporated in that way. It was probably brought over from the Narcotic Control Act in that fashion.

Senator Croll: Mr. Chairman, I have two short questions. In fact, they may not be too short. I hope I did not misunderstand you, but I was disappointed in two answers. Senator Laird asked the question of Mr. Tomalty about the youngster with a record, and the answer came back, "Yes, we need that record in order to make sure that we have it there for a second offence." Now, I am not sure that I got that right.

Then, Mr. Commissioner, you were asked a question which you fumbled a bit. You did not quite go on one side or the other. You laid it on the magistrates. Let me just give you the question again. A juvenile is charged with the most minor of offences. Usually he fines him, and the police immediately put him on the register, and there it is. Now, does that record stay there forever, in your opinion?

Mr. Ross: In juvenile court it never gets there.

Senator Croll: I am glad you said that, because that is the law as far as juveniles are concerned. I thought Senator Laird used the word "juvenile", but he did not.

Mr. Ross: No.

Senator Croll: No. Well, you would know better.

Now, let us get beyond the juvenile to the next stage. What is it—seventeen, Eighteen? Now, neither of you said. "Well, at that point we cannot put him to the trouble of two years. He does not know whether he can do this thing.

He is a poor man. He does not have any facilities. At the end of the time, two years afterwards or so, we just wash it out automatically ourselves, and that is it." Now, that was the answer I expected from you, that you would recommend that.

Mr. Ross: Of course, perhaps you felt that maybe I was wishy-washy on that subject, although I thought I was not. I was trying to recommend, hopefully, that a lot of these charges would never be a matter of record at all.

Senator Croll: All right. That is good.

Mr. Ross: If it is a very minor type of offence, but it is brought before a magistrate, a magistrate would then have the power of absolute discharge, and therefore, perhaps, there may be no record at all.

Senator Croll: But, Mr. Commissioner, you sit there in a position that is one of the most prestigious in the whole of Canada from a police point of view. That is right. You carry a heavy responsibility too. If you come here and say, "This should be done," it carries a great deal more force than if it comes from me or from any of the other senators around here. It means something to the rest of the country; they look upon you with a great deal of confidence. You can therefore be very helpful by saying, "They have got to get rid of this record, any way they like. We do not want it there." That is exactly what you said a moment ago. Say it louder.

Senator Godfrey: In certain cases.

Senator Croll: Never mind, Senator Godfrey. Stay out of this, will you? You do not want to add anything?

Well, I have another question. Let me just put it to you this way, and this is for both of you; you can divide it. The Canadian Medical Association, a very able and prestigious body, came to us and said, "Six years ago we went before a committee of the Senate and we said this, and this and this, about this same problem. We are back today and we are saying the very same thing."

I think perhaps six years ago the RCMP, or whoever it was, appeared before the Senate committee. Somebody was there, anyway; I do not remember who it was. Here you are back again saying the very same thing with respect to penalties, and so forth. Now, the criminologists and correction people, who have a great deal of experience in the raw with these people after you have finished with them and hand them over, say, "We have changed our minds."

I was there, as I told you, before, wgeb we kegakuzed kuqyir, and I went all through that, so I am not here to tell you about that. I am here, however, to tell you that I believe that if we legalize cannabis, we take it over, we control it, we provide it, we do everything that has to be done, and tell me what is wrong with that.

Mr. Ross: Well, I do not know. I think that, again, is a social thing that has been explained twice from this point of view. If this is the direction the country wishes to take, and the legislators wish to take this line, that is fine. As far as the law enforcement aspect of it is concerned, then we do not even enter the picture; but the one thing that would be wrong with it, and I will tell you this right now, is that I know the United States is not doing it, and there are other countries that are not doing it, and the minute we do it we will become an area where we are not only sending LSD and components across the world, we will also become a transportation centre here. The stuff will be coming in and

out of here, because I guarantee that our neighbours to the south will not be going this far.

Senator Prowse: Like when they had prohibition.

Senator Croll: Let me follow up on that. From what I saw of the literature, that is not the argument they used in Sweden, and it is not the argument they are using in Britain, where there is a legalization of it. They are approaching the problem in a different sort of way. I agree with what you say, that there is some difficulty there. Furthermore, I believe you are more than a police officer; you are also a social being, and you understand the problem, as we all do.

Very well. That is a good argument that you have offered us. Now give us some other arguments that touch the subject more intimately.

Mr. Ross: Regarding the whole problem here?

Senator Croll: I am thinking on my seat for the moment, not on my feet. Do you remember the problem of liquor, when they were getting it across to the States?

The Chairman: He did not live in Windsor.

Senator Croll: Well, that is his tough luck. This business had been going on for years. A row boat used to come out and get 40 cases of liquor, and it would be back in 20 minutes. It was loaded on to a boat. You know the old game they had. Let me tell you that one morning Mr. King passed an order in council. He brought it to an end over night. It was exactly the same problem. He said, "This is the end of it!" And we did enforce it; we did enforce it; and the law held up, so that the argument you produce is not quite as good as it appeared for a moment.

Mr. Ross: You are referring strictly to legalizing it.

Senator Croll: He stopped the export of liquor to the United States.

Mr. Ross: Again, you might as well legalize the whole works—cultivation, the whole thing—because nothing can be done to—

Senator Croll: Yes. Legalize the whole business in Canada. And I ask you, "Why not?"

Mr. Ross: As far as I am concerned, that is not up to me. However, though I am not a medical person, I have read enough recently on this aspect of the matter from a United States Senate committee hearing, and I guarantee that from any recent testimony on the research that is going ahead on this thing, and according to the most recent material that I have read on the subject, I am led to believe that it is a pretty serious medical problem, and a physical and a mental problem. I will speak as a person and as a family man with children. I think that from what I have seen within the last year of recent studies, and research, and medical testimony that we have been able to get from Britain and from all over the world, I am led to the conclusion that I do not want my children associated with drugs.

Senator Asselin: Are you referring to marihuana or hard drugs?

Mr. Ross: Both.

Senator Asselin: You make no distinction at all between them?

Mr. Ross: Well, I think there are harmful effects. I am not speaking as a medical practitioner, but from the research that has been done, for example, the United States Senate studies on this, and there has been quite a bit of material on this from various research experts, and again I am speaking as a family man myself right at this time.

Senator Neiman: I wonder if I could get back to some of the actual work you do in this area and find out how you operate. Inspector Tomalty mentioned that the trafficking today is controlled or operated, or however you like to term it, to a substantial degree by a rather sophisticated group of people, not by ordinary young students or young people. I just wonder what percentage of that trafficking belongs to what one might call the organized crime element and what percentage would apply to the youngster who brings home a box for himself and his friends.

Mr. Tomalty: Trafficking has all kinds of levels from the international importer who may bring in a ton of hash, to the high school student who may deal in a bag. There is a whole range of people involved in between. It is our definite impression that the public has in mind, when talking about trafficking, only one aspect of the problem and that is of the high school student or somebody like that involved in the small package deal. But behind that is a very well organized international trafficking operation which, in my experience, could sometimes teach the heroin trafficker a few innovative ideas. The money involved and the international flow of both drugs and money behind the scenes to supply this demand is quite sophisticated.

Senator Neiman: But what percentage of the total traffic arises out of each element? Can you give us an educated guess? I am speaking now of the division as between the unsophisticated student or youngster and your sophisticated organized crime group.

Mr. Tomalty: I do not think you mean just the student. You probably mean all young people involved.

Senator Neiman: Yes. Anyone other than the organized crime element.

Mr. Tomalty: I think it stands in ordinary logic that we are going to apprehend more, as I prefer to term them, street traffickers than the international traffickers because street traffickers deal in individual packages. He has to become involved in more transactions to dispose of a pound than the international trafficker has to involve himself in because he makes only one sale. So the importer is involved in far fewer transactions than the street trafficker who has to make a series of small sales. So it is pretty hard to come up with a logical number for each case. So most of the trafficking charges involve people who are selling smaller quantities because there is more activity in that area. By the very nature of the trade they have to make more sales than the big trafficker.

Senator Neiman: When a person is apprehended for trafficking, is it your decision as to what the charge will be or do you take this to the Crown? Inspector Ross said that it is the Crown who has the background and the information to decide whether the charge will be one of less trafficking, simple possession, or possession for the purpose of trafficking.

Mr. Ross: The evidence is presented to the Crown Attorney who will look at the whole thing and then he will make a ruling.

The Chairman: So it is he who will decide what the charge is?

Mr. Tomalty: It is a question of procedure. It is a question of whether you are going to proceed by indictment or by summary conviction. We would charge a person with a charge of importing a drug, and then it is the decision of the prosecutor as to how he is going to proceed, whether by indictment or by summary conviction. That is his prerogative. The law enforcement officer is the one who decides what charge shall be laid because he is the one who puts his hand on his shoulder and says, "You are under arrest!"

Senator Croll: But do you not use prosecutors from outside the Crown Attorney's offices?

Mr. Ross: Yes, federal prosecutors.

Senator Croll: So that he is trained in that area and he is experienced.

Mr. Ross: Yes.

Senator Neiman: Then we can see also from the statistics that the judge or the magistrate, as the case may be, despite the charges made, can obviously exercise a very wide discretion in the type of sentence to be imposed. I am conscious of this discrepancy not only in the charge procedures as between different centres across Canada but the types of sentences that may be given in different centres. Inspector Ross mentioned that in an area where the drug scene is comparatively new the enforcement agents may be inclined to be a little more severe in the first instance than they would be in the larger centres. I have had evidence of this as between, say, Brampton and some of the smaller centres around there, and we have had some indications that in fact magistrates will either give an absolute discharge or they will put an accused person on parole without supervision in the major centres. Is not this again an indication that the problems—and here we are getting back again to the social problem—is so big that magistrates could not cope, and even our jails could not cope with everybody if you were to charge everybody who was found in possession of drugs? If they were convicted, we just would not be able to cope with the situation. I am speaking of those found to be an offender under the present law, or even under the projected law.

Mr. Tomalty: Well, senator, any legislation you enact in a country, is it enacted to totally eradicate a particular activity? If that is the case, then it is a failure. The legislation you have before you is a control device and is intended simply to try to control the availability of that drug in the community. Again, it comes back to Senator Croll's proposition that if you want to have availability of this drug and if you feel that people can indulge in the use of it and that it is not detrimental to their health and to the health of society generally, not just to the individual, but to the total spectrum of society, then the legislators should legalize it. But if you feel that it is detrimental and that people should not have it, and if you do not want to have trafficking and you want it to be illegal, then I think you have to try to control it.

Senator Neiman: I agree that we want to control availability.

Mr. Tomalty: Why?

Senator Neiman: Because it is a harmful drug. I do not think anyone will deny that. It is recognized as being a

harmful drug. I think we all agree on that particular point. Is there an area, somewhere in between what is here and legalization, as Senator Croll suggested? In other words, can we retain the offence, retain the deterrent aspect of it, but put it in an area where it is somewhat comparable with it—a little more serious than a parking ticket, but getting it into that area? Do you think that would be more feasible?

Mr. Tomalty: If I can speak to the philosophy of control, if you de-stigmatize it too much, what is there? You have no control. You must remember that if people are going to be deterred, you will want to try to control it. You do not want them to have it. You say it is harmful to them. You have to be careful that you do not go too far, that it slips over and becomes legalized.

I think you have gone far enough in this legislation, with the fines that you have available and with the provisions of your criminal Records Act—or, as someone has suggested, if you thought it was necessary after a three-year period that a record for simple possession be automatically expunged. These are the mechanisms you can work on. But I still say, as law enforcement people, that if you charge us with the responsibility of trying to control availability, we need that possession charge in the criminal justice system.

Senator Neiman: Getting back to your one reservation about the law as it is presently proposed under section 50, subsection (2)(b)(ii), do you feel there is any inconsistency here? If we accept your argument on the question of importing and exporting, do you think there is an inconsistency here? In the new law we have turned these two offences around, in effect. Trafficking had the more severe penalty before, and now we are suggesting that this importing and exporting—

Mr. Tomalty: You mean at the present time?

Senator Neiman: Yes.

Mr. Tomalty: For trafficking the penalty now is life imprisonment under the Narcotic Control Act, and for importing under the Narcotic Control Act at present, the penalty is life imprisonment and a minimum of seven years.

Senator Neiman: That is right. I am sorry. I did turn those around. So, in your mind, you would like to have that one provision removed from the bill?

Mr. Ross: Yes.

Mr. Tomalty: I think we should hold hard and fast to the view that we do not want people importing drugs, even cannabis, for their own personal use.

Senator Godfrey: May I make a statement arising from a statement made by Senator Neiman, who said that we all agreed that it is a harmful drug? I want to go on record as saying that I do not agree, and I think the Canadian Medical Association does not agree, that it is a harmful drug if used only casually. The statement was made that excessive use of the drug was harmful. I want to make it clear that I believe, and there was evidence from the Canadian Medical Association, that there is no evidence as yet that very casual use of it is harmful. I want to be on record as saying that.

Senator Prowse: If you do not take too much strichnine either, you do not die.

Senator Sparrow: Mr. Chairman, following up a statement made by Senator Neiman, it seems to me that all use of marihuana—with one exception that I will come to—is the result of trafficking, unless it is produced in Canada for a person's own use. That is the way I would size it up. It is all trafficking right down to the point of the user. Would you have an idea of how much of the marihuana might be produced in Canada—what percentage?

Mr. Tomalty: Locally produced?

Senator Sparrow: Yes.

Mr. Tomalty: Of the total amount of marihuana used in our society, a far smaller percentage is local production, because primarily users are interested in the THC content. If you do not deal with the original seed from a good producing plant, let us say from Mexico, natural-growing marihuana, after a period of time and evolution, reseeding itself in this country, will have a very poor THC content. They are not interested in smoke; they are interested in THC, in altering their behaviour—having it affect them.

Senator Sparrow: Mr. Chairman, may I go beyond the supplementary?

The Chairman: Go ahead, senator.

Senator Sparrow: In law enforcement, if you get the original importer into the country, that would solve a lot of the problem. But he is hard to get at. He is very difficult to get at. Do you find it easier to get at the problem from the user up, or from the importer down, so to speak? Is that why you require the charge of possession by the user, so that you can work back to the trafficker?

Mr. Tomalty: The best way to answer that question is to go back to my original statement, that we are involved in the control situation. We are trying to control the availability. We work at the trafficker. He is naturally much harder to apprehend than, let us say, people who are more frequently indulging in it, because he does not have to in bringing in a ton of hashish every day, he may become involved in it for a very short period of time that it's in and he can dispose of it. So we work at that level, to try to control the international supply coming in.

But when you come down to the philosophy of control for possession purposes, and why it is needed, I submit that you need this so that people do not walk around indiscriminately in possession of the drug, that they do not just sit in a restaurant or anywhere smoking that drug, that if they do decide to do this they will have to suffer the consequences of becoming involved with the criminal justice system—that is, going before the judge. This is the deterrent, the stigma. They will have to suffer the stigma attached, if they were apprehended, that they will have a criminal record for a period of time, and that every police officer therefore is a threat to them if they do so.

So I say this controls the availability in our society if you keep this threat. I think it serves society quite well, that if you have a control mechanism operating whereby people are forced to be discreet in their indulgence and use of the drug, you also, at the same time, keep down the spread of the drug, and it is not that freely available for everyone to indulge in. Most of the time we get hung up on the individuals who are already involved in the use of the drug. We need to look at individuals who are not yet using the drug, who may otherwise become involved with the use of the drug if it were freely available and there was not the

stigma attached. I think we have an obligation to our society, especially to juveniles and adolescents who are not necessarily in possession of what is called wise personal choice because of their immature years. We must prevent them from becoming exposed to this chemical, and not always get hung up on the individual who is already using the drug.

Senator Croll: When talking about production in Canada, what province is the lucky one?

Mr. Tomalty: I do not think any province escapes it. I do not think there is any province in Canada which can up and say that the cannabis plant does not grow in it.

Senator Croll: Where does it grow? You said there was production in Canada.

Mr. Tomalty: We have encountered commercial production in British Columbia, in parts of the middle west, in Ontario, down in the East, and even Newfoundland.

Senator Prowse: In Prince Edward Island?

Mr. Tomalty: Yes, I think there were some found in Prince Edward Island. I do not want a delegation from Prince Edward Island on my doorstep tomorrow. I am not positive about Prince Edward Island.

The Chairman: Are there any further questions?

Senator Croll: The argument made by Mr. Tomalty did not quite hit me, when he spoke about being unable to control it. We had difficulty in controlling liquor. If honourable senators will remember, there used to be a flask around. The youngsters would move around with it. It was within the home that we had difficulty in controlling liquor. But we did control it, and we also controlled it outside the home. We now control any number of drugs that are bad by saying, "You have to go to the doctor for this; otherwise you cannot get it." What is wrong with having to control it if we take it over completely?

Mr. Tomalty: I think that is the choice of the legislators. If you feel it is not harmful enough to society to warrant the controls, then it is your privilege to do that. But if you are going to ask us to control it—as Senator Neiman said, in her opinion it is bad enough that you do not want to have it—all I am saying is, we need certain tools if you want a certain response from us.

Senator Croll: What I am saying is that if we decide to control it, you will still have the job—at an increased salary, if you understand, but someone will do it.

Mr. Tomalty: I think you are perfectly right, senator, that if you diminish the possession way down, we will have a lot of work to do, and we will certainly need a lot more resources to control the traffic.

Senator Croll: We have got a lot of unemployment in the country and we can use more people.

Senator McElman: I should just like to pick up a statement Senator Croll made and move on from it. We did control alcohol. He may be talking about enforcement, and our witnesses are concerned primarily with enforcement. However, we certainly have not controlled the social problem. Let me just move backwards from that. Is it not a fact that when there was total prohibition within Canada there was a very severe enforcement problem?

Mr. Ross: Yes.

Senator McElman: Is it not also a fact that once the laws of control came in, which in effect said to Canadian society, "it is legal to use; It is legal to possess," your enforcement problem over a period of years and its evolution became much, much less than it had been?

Mr. Ross: Yes, as the laws changed.

Senator McElman: I know you are probably not a sociologist, but as your problems of enforcement decreased because of the relaxation of the law, did that decrease the social problem?

Mr. Ross: To me, alcohol is one of the biggest social problems we have in Canada today.

Senator McElman: Agreed. There is a proposition made by many, and it has been voiced here, that by legalizing the growth of marihuana, the marketing of it, the use of it, the problem becomes much, much less. I am sure you would agree that your enforcement problem would become much, much less than it is today, if it were legalized. Is that correct?

Mr. Ross: Yes.

Senator Prowse: You would not have any problem.

Senator McElman: Do you think it would decrease the social problem to any degree?

Mr. Ross: If we take the example of alcohol as being relevant, I would say the reverse would happen.

Senator McElman: Perhaps I can carry this to its most ridiculous extrême. One of your enforcement problems today is the enforcement of highway traffic laws. On

average, we have speed limits of 60 to 70 miles an hour. The statistics we are given show that highway fatalities and pedestrian and vehicle occupants' injuries are attributed in fair measure to excessive speeds beyond the speed limit. If we were to increase the speed limit across Canada to 100 miles an hour, would your enforcement problem become less?

Mr. Ross: Yes.

Senator McElman: Would the social problem become less? Would the life expectancy of Canadians increase? Would it help pedestrians?

Mr. Ross: No.

Senator McElman: I just wanted to pose some questions simply to point up, ridiculous as the questions are, that there may be simple answers to reducing the enforcement problem, but I suggest that the simple answers do not reduce the social problem.

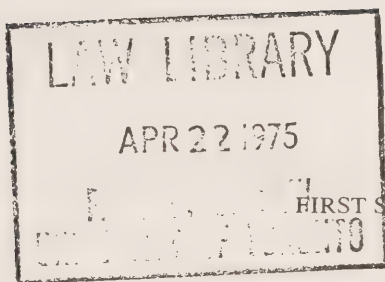
The Chairman: Are there any other questions?

On behalf of the committee, Deputy Commissioner Ross and Inspector Tomalty, I want to thank you for the help you have given us.

The committee will now adjourn until 10:30 a.m. Tuesday next, when Mr. Keith Cowan, who is Adviser on Drug Abuse to the Government of Prince Edward Island, and who has appeared before the United States Senate Committee, will give evidence. At 2 p.m. Mr. Norman Panzica, Consultant to the Ontario Probation Service and Youth Consultant to the Council on Drug Use, will appear before us.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 7

TUESDAY, FEBRUARY 18, 1975

Fourth Proceedings on Bill C-19, intituled:

**“An Act to amend the Food and Drugs Act,
the Narcotic Control Act and the Criminal Code”**

(Witnesses and Appendix: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Langlois
Buckwold	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Sullivan
Lang	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Senator Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

February 18, 1975.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 10:30 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Fergusson, Godfrey, Laird, Langlois, McGrand, Neiman and Quart. (10)

Present but not of the Committee: The Honourable Senators Norrie and Rowe.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee resumed its examinations of Bill S-19 intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

Mr. Keith Cowan, Consultant on Drug Abuse, Department of Education, Province of Prince Edward Island was heard in explanation of the Bill.

At 12:20 p.m. the Committee adjourned until 2:00 p.m.

At 2:00 p.m. the Committee resumed.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Fergusson, Godfrey, Laird, Langlois, McGrand, Neiman, Prowse and Quart. (11)

Present but not of the Committee: The Honourable Senator MacDonald.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee heard Mr. Norman Panzica, Youth Consultant to the Council on Drug Abuse, Ontario Probation Service.

In addition, the following witnesses, representing the Department of the Solicitor General, were heard:

Mr. B. Kyle Stevenson, Member of the National Parole Board;

Mr. G. Depratto, Director of Policy Planning and Program Evaluation;

Mr. Gérard Doucet, Legal Adviser, Department of the Solicitor General;

Mr. Pierre L. Dupuis, Acting Chief of Clemency and Criminal Records Division of the National Parole Board.

On Motion of the Honourable Senator Asselin it was Resolved to print in this day's proceedings the form entitled "Application for Pardon-Criminal Records Act". It appears as the Appendix.

At 4:45 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, February 18, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 10.30 a.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, our witness this morning is Mr. Keith Cowan, Consultant on Drug Abuse to the Department of Education of the Province of Prince Edward Island. Mr. Cowan, I may add, was also one of the witnesses before the United States Senate Committee which held hearings on drug abuse and which reported some time ago.

Mr. Cowan has a statement from which he will read. Copies of it are being produced now and will be distributed when they are available. You will notice that other reference material has already been distributed to you.

Mr. Cowan, would you proceed, please.

Mr. Keith Cowan, Consultant on Drug Abuse to the Department of Education of the Province of Prince Edward Island: Mr. Chairman, honourable senators, thank you for inviting me here today.

[*Translation*]

I am afraid that I am not fluent in French, and also I did not have the time to have my presentation translated into French, as I finished writing it only half an hour ago.

[*Text*]

As I say, there was no possibility of having it translated into French, and for that I apologize.

I will attempt to pull this brief together quickly. May I say that my wife, who is often wiser than I—and the chairman admits that his is, too—has suggested that I might take a minute or two at the close of my presentation to illustrate at the blackboard a program we have developed as a result of our five years' work in observations with the schools. This program has been most telling and I hope the evidence you have in front of you, as we get to it, will demonstrate that fact.

First of all, may I indicate my great respect for the institution of Parliament. As one looks around the world—and I have visited many places—one recognizes that even with all our capabilities for constructive and destructive behaviour, as a great Englishman said, there is no other method we prefer to live under, if freedom is our choice.

Senator Croll: Mr. Chairman, will the witness say something about himself? I have not seen the brief and I do not know anything about him at all.

Mr. Cowan: I am an aging, pre-medical, Bachelor of Science, Honours, from McGill University. I guess my claim to be here is partly due to the work that I did for the Economic Council of Canada while I was there with the National Commission on Labour Relations in the area of communications. I did a great deal of work in the communications area. I mention in my brief that some five years ago, when the Le Dain Commission first came to Prince Edward Island, I had just gone down there at their request and the Minister of Justice asked me if I would meet the advance party with him. We came away with some concern and he decided to accept John Turner's request to make a statement. He was the only minister of the Crown to make a statement on behalf of his government before that Le Dain Commission set of hearings.

He asked me to take a little time for a couple of weeks to see if I could obtain some information, and that "little time" has now occupied half of my time for the last five years, not to mention the many weekends and overtime involved. Is that sufficient background, senator?

Senator Croll: Yes. It is very interesting.

The Chairman: But your official position is as I stated it, Mr. Cowan?

Mr. Cowan: That is right.

The Chairman: Mr. Cowan is the first witness from the Atlantic Provinces, and, as an official of the Department of Education in Prince Edward Island, he is a consultant on drug abuse.

Mr. Cowan: We feel especially strong about our presentation, Mr. Chairman, because, of course, Canada was a little late in joining us in Confederation and, naturally, this shows the relationship of the value of our work here.

Senator Croll: Very good. You have a good memory, anyway.

Mr. Cowan: I hope you will feel the same, sir, about all I am going to say.

I am also convinced that our political institutions require a most active participation of both the professional and the ordinary citizen to make them work, if we are going to have a just society and are going to have an effective form of government. It cannot just happen by accident. I have learned in my own work and from my own experience that communications failure is perhaps the most fundamental problem affecting big institutions, and the government is a big institution. May I say that I hope our time this morning will be enjoyable as well as instructive and valuable.

I should like to mention one interesting anecdote, if I may. Just after he retired as Prime Minister, Mackenzie King, was present during the Throne Speech at the open-

ing of the next session of Parliament in your Senate chamber. He was seated beside my father, who happened then to be the Moderator of the Presbyterian Church of Canada.

My very curious father, meeting him for the first time, said to him, "Sir, in all the long years of your service to the public of Canada, what do you consider to be your most important contribution?" After a considerable pause, Mackenzie King turned to my father and said, "The things I prevented happening."

I believe this has special reference to some of the modern problems (a) of pollution, which is in every headline and (b) of the drug abuse problem, which is a pollution of the body. It must also be accompanied, of course, by more positive programs related to social and cultural improvements to remove some of the pressures that create drug abuse problems, and the encouragement of less harmful and more creative life styles.

In a very dreadful and deceiving section of a document put out by the American Consumers' Union—the "great" Consumers' Union—entitled, "Licit and Illicit Drugs", two years ago, and written by a journalist called Brecher, the author claims as follows: "Marihuana is here to stay"; "Prohibition does not work"; "A law enforcement policy that converts marihuana smokers into LSD or heroin users should be abandoned."

I might add that the journalist Brecher, to my surprise, when I studied his article at length before the Washington hearings, had used, I found, the Interim Report of the Le Dain commission as his excuse for saying that this represented all the national commissions, when he said, that this was his bible for making the claim.

I would ask you to review the full implications of the way in which his material is absolutely contrary to the final Le Dain report, which he should have known about, and which was available shortly after he wrote this, and the material for which was available well before he wrote it.

In contrast, the Le Dain commission majority, four out of five, agreed as follows,— and this I am sure you know:

In our opinion, these concerns (the known and potential medical harm from marihuana use) justify a social policy designed to discourage the use of cannabis as much as possible.

The stage has a responsibility to restrict availability of harmful substances . . . and that such restriction is a proper subject of criminal law;

A policy of making cannabis legally available under government controls would increase, rather than reduce availability.

There is no doubt that criminal law creates risks for the trafficker.

Five years ago the late Elmer Blanchard, then our delightful Attorney-General of Prince Edward Island, a man very close to the soil, as the Islanders are, and a lawyer, was asked by John Turner to make a presentation. As I explained, he was concerned about the publicity that was mounting across Canada about the harmlessness of this drug, and he took the opportunity of making this presentation. This is what he said about the law on February 21, 1970:

. . . a society must always seek to protect itself, and its future, against actions which would tend to destroy the general good of society. As a result, a problem is

frequently created between the rights to personal freedom and the good of society as a whole. A government must legislate with a view to the general good of society with as little interruption of personal freedom as is required to preserve the general good. Legislation, in a very basic sense, also puts a stamp of approval, or, if you will, gives moral assent to an action in the minds of the general public. Great caution is therefore required to meet these difficult balances and responsibilities.

What concerned Mr. Blanchard and many of us was, in his words, in the brief, "the apparent campaign under way in Canada, and other countries, to pressure governments into legalizing the drug." From one senior Canadian official he reported as follows:

We are facing a very powerful lobby representing a small minority who are making themselves felt in government and other circles. It is now time for the feelings of the family people concerned with youth, and the general responsible public to be heard with conviction.

I am sorry to report that this situation is not entirely altered today. It was apparent to all of us that the place of the law depended largely on whether one considered cannabis products to be harmful or relatively harmless, that is, no more, or probably less harmful, than tobacco or alcohol.

I now wish to refer to four distinguished medical clinicians and scientists from the United States and Canada, of the highest reputation. These gentlemen are: Dr. Conrad Schwarz, Associate Professor of Psychiatry and head of the mental health section of the University of British Columbia; Dr. F. W. Lundel, Associate Professor of Psychiatry, McGill University, and in charge of research and clinical work at two Montreal hospitals; Dr. Henry Brill, head of the American Medical Association drug committee and later member of the United States' President's drug commission; and Dr. Donald Louria, former head of the New York State drug commission. These gentlemen, acting as advisers to Prince Edward Island, assured us that their clinical work and studies showed the drug to be much more dangerous than was popularly realized. Dr. Lundel, with prescience, said, as long ago as 1970, that evidence was growing among regular users of marihuana of: (1) Organic brain syndromes; (2) Irreversible brain damage; (3) Perception distortion; (4) Some benders; (5) Reversal of social values; (6) Memory loss; (7) Motivation loss; (8) Movement to harder drugs; and (9) Loss of IQ potential.

Recent scientific experiments are now bearing out his observations, which were severely criticized at that time.

As a result, the PEI government warned strongly against any attempt to legalize the drug until such time as science had cleared up these matters and, while removing jail sentences for first or second offenders for possession and removing conviction records after two years, a "no nonsense" posture must be maintained in the courts for all offenders, including strong sentences for trafficking. The mounting propaganda campaign not only for legalization but also to create a "benign" image of the drug continues to this day.

I must report that in making presentations to thousands of school youths, and parent and teacher groups, in PEI and New Brunswick in the past six months, and from reports elsewhere, I have found an almost universally ingrained "harmless" image, a belief that the government is headed towards full legalization and a growing use of

the drug at lower age levels. How this came about is well documented in my Washington Senate committee presentation in May, 1974, and in the testimony of Dr. Hardin Jones of the University of California and others.

Just let me touch for a little while on the Canadian scene. CBC in Canada shares a proportion of the blame by placing drug advocates like Ginsberg, or Dr. Tim Leary, many times on programs like "This Hour Has Seven Days", without any rebuttal of their claims. Incidentally three prominent American psychiatrists, whom I have met, and who know the once brilliant Dr. Leary, discuss him today as a "mental vegetable" from ten years of personal use of the drugs he promoted, namely, marihuana and LSD.

The Canadian commission on youth, December, 1974, recommended legalization for 18-year olds, on the erroneous grounds of a so-called lack of medical evidence of any serious harm from marihuana use. Papers like the *Toronto Globe and Mail* consistently created the impression of a "relatively harmless drug" in stories and editorials. Mr. Chairman, I will not burden you with the stack of clippings that I have here, collected over the years.

Go to the offices of Canada Information Service and you will not find up-to-date information on the known harm of the drug. Many National Film Board films also help to create this image. I am not saying they have done this deliberately, necessarily, but this has been the result over these past five years.

In Winnipeg, last March, at the invitation of the Federal Non-Medical Use of Drugs Directorate, I met with drug education directors from all provinces and was met with derision—by all but three smaller provinces—when I placed the latest scientific material on the table. Fortunately, the Ontario Addiction Research Foundation has had to change its public image of the drug in the past few months, and pay attention to the clinical evidence, which is now being supported increasingly by scientific evidence.

Unfortunately, the Interim Report of the Le Dain commission did much harm, both in the way it was written and in its approach to the evidence, also creating a national impression that marihuana is relatively harmless and that legalization might be the most viable solution. Dr. Fred Lundel of McGill prepared a brilliant, 72-page critical analysis of its biases and failings for the presentation of our PEI attorney general, Gordon Bennett, to the second Le Dain hearings in Charlottetown, entitled, "A Drug is Guilty Until Proven Innocent." The final Le Dain report was much improved, but again its evidence of harm was well buried in text and, erroneously, its support for reducing possession penalties, and not the harmful effects, got the main play on the national news, again supporting the growing "benign" image.

Far worse, of course, was the report of the American National Commission on Marihuana and Drug Abuse, which is written in such gobbledy-gook, and which has left such a benign impression so deeply ingrained in America, with Canadian off-shoots, that Dr. Henry Brill, its key medical representative, had to appear before the United States Senate committee in May, which I attended, to complain about the misrepresentation made by the press and others and to point out the serious medical and social problems contained in its winding wording. Privately, Dr. Brill several times complained to me—during its preparation—about the internal battles that went on to get the permanent staff to write material that was wanted, and that the commission's agreement, or consensus, had blunt-

ed the presentation of some of the important warning evidence.

The most recent spectacle was the manner in which our CBC and CTV national television news and radio networks, for an unusual two days, played up the suggestion of the Canadian Medical Association before this committee, that penalties in this bill should be even more reduced than the government suggested, not emphasizing that portion of their report which outlined the serious health warnings. They did touch on them, but the emphasis was on the other aspect.

The most serious and disturbing performance which I witnessed was put on by Dr. Lionel Solursh, who spoke as a member of the CMA team before the national TV interviewing cameras, stating that "all drugs are harmful", stressing that "even caffeine causes chromosome breakage." This appeared to be designed to counter the established and now supported evidence that marihuana use, in as low doses as one joint a week in 60 per cent of users, causes medically unacceptable chromosome breakages.

On Sunday, I called Dr. Morton Stenchever, head of the Department of Gynaecology of the University of Utah, whose work on chromosome breakage was published on January 1, 1974, in the *American Journal of Obstetrics*, after a very, very careful survey by that journal. He reported that their careful studies of people using up to ten to 12 cups of strong coffee a day—and he uses it himself—showed no chromosome breakages, nor did a very high concentration of alcohol. To that I would add that he said even wood alcohol. Also, both the users of marihuana, 60 per cent of whom had unacceptable chromosome breaks and the control groups of non-users who had none when tested were, for the most part, tobacco, alcohol and coffee users in the published studies showing serious chromosome damage.

Thus the CMA presentation actually served to reinforce the "benign" image among Canadians, although this was surely not their intention and even though Dr. Bette Stephenson appeared to say two or three times, "I agree with the government that it should not be legal". But the image is the same thing I am talking about from the standpoint of communications.

Part of the problem has been the failure to take clinical evidence as a serious warning and also to be confused by the fact that even when science has made a discovery, and it has been confirmed by others, always there are other research studies—that are improperly done or looking in the wrong place or without reference to particular findings—which are then presented to contradict new findings. Somebody somewhere has to make a judgment.

In december I talked with Dr. William Paton, and I met him last year in Oxford, Head of the Department of Pharmacology of the University of Oxford, England and possibly the world's foremost authority in this field. He told me that recent work had, by and large, further confirmed the serious allegations made against cannabis by the scientists at the Washington senate hearings in May, as noted in my P.E.I. booklet "*Marihuana—What's New*" which I should like to pass around later.

North America's foremost scientific publishing journal *Science*, which I believe many of you have seen, pointed out on August 23, 1974, that many scientists, sociologists and others, some well known in their field, had advocated a legalization of marihuana, without evidence of its harmless

nature—and I stress this point. *Science* showed, instead, a variety of serious problems, including the very real possibility of brain damage amongst steady users. Its author told me the other day that no information has come along to make the editors change their position.

In contrast, United States news media are now broadcasting the advent of a new report by Brecher of the Consumers' Union, purporting to suggest that the new scientific discoveries of harm from cannabis use are not borne out by some clinical field research projects. I have reason to believe, knowing some of this research, that this will prove to be the same kind of misleading propaganda as my paper in the Washington hearings showed their "Licit and Illicit Drugs" chapter on marihuana to be. What is astonishing, considering the high prestige which the Consumers' Union has in the merchandise field, is the Union's executive recommendation in this book for "immediate repeal of all Federal and State laws governing the growing, processing, transportation, sale, possession and use of marihuana" without, as "*Science*" states, any real evidence to support "harmlessness."

A lobbying organization called NORML—the National Organization for the Reform of Marihuana Laws—out of Washington, D.C. is the worst offender in attempting to legalize marihuana and to create a "relatively harmless" image of marihuana. I presented in Washington, and have with me, considerable evidence of their clearly misleading advertising, their lobbying efforts in almost every state of the union to achieve "decriminalization" laws as a first step to legalization, and their vicious and uncalled for personal attacks on individual American scientists when they announce new findings suggesting damage from marihuana use. For example, they sent to every press, radio and TV outlet in the United States a letter containing the most distasteful personal attack on Dr. Gabriel Nahas of Columbia University when he announced to the press the world's first clear picture of serious human cellular damage from the use of two or three joints of marihuana weekly. They also, I am given to understand, make continuing and frequent contact with the drug sections of our Federal Department of Health, the Canadian drug journals such as Ontario's, and, I would gather, are taking a close and careful interest in these proceedings. Perhaps you did not know that their main financing comes from *Playboy* magazine—up to \$300,000 a year; see January's *Playboy*—and that their slogan placed on bumper stickers,—I have copies which I shall pass around—and sold on sweaters, et cetera, to youths across the United States is "Liberate Marihuana."

Closely related to them, and frequently hand in hand in its operations, is the National Council on Drug Abuse of Washington, D.C., which many people think is the official link to the presidential executive office, but is instead a privately funded operation responsible only to its directors. It has been interesting to us that they have almost always avoided giving favourable publicity to negative scientific findings about marihuana, even neglecting to mention major publications unfavourable to the drug in the lists of recommended readings, as I noted in Washington, at least until recently, for I cannot speak of the past six months. I note with interest that this Senate committee has undertaken, on someone's advice, to bring up from Washington to give testimony here, Dr. Thomas E. Bryant, President of the Drug Abuse Council, possibly believing that he has some official relationship to the executive branch of the United States government.

I place before you, and I have a copy here, a press release which he sent out across America on July 17, 1974, severely attacking the well supported findings of Dr. Stencherer, of serious chromosome damage and the severity of these findings by Professor Hardin Jones of the University of California, the brain damage evidence of Dr. R. G. Heath from Tulane University, and the cellular damage to white blood cells of the body's immune system discovered by Dr. Gabriel Nahas of Columbia University, as well as the statements of Dr. Harvey Powelson, who was for 10 years head of the Student Health Centre of the Berkeley Campus of U.C.L.A.—where much of this all began—all presented to the United States Senate Hearings in May. Dr. Bryant denounced these on the grounds of the 1973 report of the United States Department of Health. I might add that if you read Dr. Powelson's findings you will find that 10 years ago he was favourable to the legalization of marihuana, but as the result of 10 years' experience in the world of its use in our climate, he has come to the conclusion that this drug may be more insidious and more harmful than any other drug in use on the campus and he has staked his reputation on that. Had Dr. Bryant bothered to walk over to the Department of Health, he would have discovered that these new findings were being taken very seriously by Dr. Wm Pollin and Dr. DuPont since their own new research was suggesting related conclusions, all of which appeared in the new 1974 Department of Health Report to Congress, issued a few months later, and, of course, in *Science* about the same time.

Dr. Bryant shows his grave lack of knowledge by ending his release with these words—"even if marihuana were eventually shown to be as dangerous as alcohol or tobacco"—this assumes that it is not—"giving a criminal record to the user only exacerbates the potential harm". Surely the responsible position of a medical man must be at least to consider seriously as a warning the "potential" danger shown by published research by highly reputable scientists—some of them among the foremost in the world—and not to attempt to decry it on the evidence of outdated research.

I am given to understand also that Dr. Bryant has recommended to this committee that they hear the testimony of District Attorney Pat Horton of Eugene, Oregon, whom you have now officially invited to give testimony on the effectiveness of the new Oregon State laws—or perhaps I am wrong in that. You will be interested to know that Attorney Horton is being promoted, paid and transported about the United States to legislatures and other groups by NORML and *Playboy* money, to present his enthusiastic presentation of the virtues of the new Oregon law, which decriminalizes marihuana, making possession of less than an ounce an offence which has a maximum penalty of \$100 and which is seldom enforced.

I too have sought information from Oregon in the past few days to give you the evidence from Lieutenant Harold R. Berg of the Oregon State Police Criminal Division; from District Attorney Garry D. Gortman of Marion County, where the capital is; from a Portland City police official and from an educationalist. I had to do this by telephone, but the information is coming by letter.

Lieutenant Berg Reports that since the new law came into effect, even though surveillance has been lessened by the police due to cuts in police work from economy measures and a discourages attitude among the police force in this area on account of the new law and the courts' attitude, there has been a 63.1 per cent increase in all offences

related to marihuana for a nine-month period only in 1974. Lieutenant Berg believes that, had the whole year been studied since the new law, the increase would have been 25 per cent extra, or more than a total of 85 per cent increase for the year. I give the way it is broken down into the various offences of possession, cultivating, sale and so on:

<u>OFFENCE</u>	<u>INCREASE (Per Cent)</u>
Cultivating	130.6
Transportation	34.6
Possession	44.1
Sales	44
Use	15.8
Criminal Drug	
Promotion (Group use)	306
Total offences	1,085 for nine months 1973
Total offences	1,770 for nine months 1974
	63.1 per cent increase

The state police force also observed that more and more marihuana is now being used and that users appear more susceptible to using hashish and other stronger drugs. That is, they are more easily led, which is one of the demonstrated effects of the drug. I understand that Dr. Malcolm is coming here at a future date. He is, perhaps, the key Canadian in this field and I would ask you to question him in this regard.

Lieutenant Berg also reports that "burglary and narcotics go hand in hand in Oregon" and 28.3 per cent of burglars arrested were addicted to heroin or barbiturates. Burglary rates in 1974 are up 16.9 per cent from 1973, while seven major offences are up 20.2 per cent. Since there is now no criminal record for marihuana offenders under the new law for possession, arrest information nevertheless shows many repeated arrests. A senior official of the Portland Police Department responsible for this area also told me that their city police have given up apprehending persons for mere possession or public use of marihuana or hashish, because it is difficult to get a conviction in the court. He also states that more kids are seen openly smoking around school areas. The following is most important from the standpoint of parents. The tragedy, he said, was that the value of the juvenile courts to aid youngsters in need of special help, either as addicts or otherwise, is being denied many youngsters under the new law, because they just are not being picked up, due to the laws' effect on enforcement. An Oregon education officer told me that the new law had tied the hands of school authorities in many places in trying to check violations. Among adults, less than 5 per cent of drug cases, including heroin, reach conviction stage in Oregon.

District Attorney Gortman, over the telephone on Sunday, authorized me to quote him as follows:

(1) More younger people are using marihuana since the new law came in. More kids are trying to convince their parents and their younger pals that it is OK to use marihuana since the police will not arrest you and also because they believe that the promulgation of the new law has now made it legal by inference and therefore relatively harmless.

(2) There is more marihuana than ever before being smoked according to the narcotics unit of their county.

(3) Police tend not to bother, because they feel they have been undermined by the law.

(4) Should the new law ever be put to a referendum it would be overwhelmingly defeated, because similar laws were strongly defeated last year in both California and Washington State referendums and, since then, much more scientific evidence of the harm of marihuana has become public knowledge, as well as growing experience of its problems.

I would strongly suggest that if you invite District Attorney Horton of the University City of Eugene, you should also invite District Attorney Gortman of the capital city with 17 years in office, to hear the other side of this story.

All of the above to whom I spoke told me that they also have grave misgivings as to the validity of a questionnaire study of 800 persons, said to be selected at random in Oregon to reflect general views on the new decriminalization law. The results appear to give overwhelming support to it. This study was conducted, I am told, by the National Drug Abuse Council of whom we have been speaking. Apparently it was handled by an advertising agency and compiled with some other data collection and there is a suggestion that the results were "predictable" in advance by the approach used. I can say no more without further evidence.

Of special interest, I lay before you two court cases which were tried on the basis of the evidence of the harmful versus the relatively harmless effects of marihuana—a supreme court of Massachusetts decision of December, 1967, which was based on clinical evidence, which was about all that was available at that time, and an Alaska case of 1974 which was based on the new scientific evidence. With the NORML financing, I am given to understand, a number of people and some very highly paid lawyers, were sent up to Alaska to attempt to win the case. In both courts the evidence of the harmful effects was accepted as containing valid reasons for convictions. The whole battle was over the issue of what the clinical and medical evidence was saying.

In recent months, I have faced several thousand youths in junior and senior high school groups, and large numbers of parents and teachers in special meetings in Prince Edward Island and New Brunswick, at the request of principals are guidance counsellors. I represented to them the latest scientific knowledge of marihuana in as interesting a way as possible, with discussions and involvement and requested that, sometime afterwards, the youngsters write their impressions about the information they learned. The following is the almost universal response:

Contrary to the widely held and published view that drug education does not work, the youth response is massively favourable. In Fredericton High School, for example, 500 youths applied to attend—they wanted facts. They were faced daily with marihuana availability and peer pressure to use the drug. Please read the comments of the two guidance counsellors as attached.

I will quote from Mrs. Elsie Murray, one of the senior guidance counsellors:

Many of the students have expressed their interest and appreciation. They were anxious and eager to hear the facts established by research in regard to the effects of marihuana.

Note the following, especially, because it is critically important and found everywhere:

The recent press reports on the Food and Drugs Act changes tended to reinforce the idea of many that this drug was less harmful than tobacco or alcohol and that it could be used with few long term effects.

I continue to quote her letter:

Several have said they were "on the fence" as to whether or not they would experiment. The facts which you gave them have helped them make the decision that it is not worth the risk; they now feel that they have some irrefutable arguments to withstand the pressures from their peers.

She went on:

The lack of information from our educational and medical services has made the counselling of students with drug problems difficult.

I might add here that we have had a very difficult time obtaining from the Non-medical Use of Drugs Directorate the type of information which, with a little investigation, we were able to find from some of the key scientific laboratories in the world.

Elsie Murray continues: "As you mentioned in your talk, the changes in the memory and perception processes are very subtle and the users are lulled into a false security that they are 'all right'. Mrs. Murray, as does her counterpart, in the other letter, Mike Springer, says that: "Marihuana for some is the most difficult drug to break from because of social acceptability. Youngsters, however, who quit the drug..." and this is most pertinent, "... showed marked improvement in marks, appearance, family relationships, et cetera in small, slow steps—" (as the body removes the drug from the system) "... until finally the student himself realizes the change." I have much evidence of that from other schools as well. I have also included copies of notes from one P.E.I. student group, 15 out of 71 of whom had used the drug more than once.

The vast majority of all the groups tell me—and this is critical—(1) They had believed that the drug was quite harmless; (2) They believed that the new Food and Drugs Act meant that the government is less worried about its harmfulness and is starting to legalize it. They also believe that this was the Le Dain position; and (3) A number in each group indicate they have either quit the drug or have determined not to use it after the presentation.

In Ann Arbor, Michigan, where it is a summary "traffic type offence" with \$5 fines, payable by letter, the principal of the main high school and the assistant police chief told me that the drug is now socially accepted, widely used among youths, and the knowledge of the new research findings is virtually unknown or unaccepted due to confusing stories.

No serious attempt to educate on this drug is made in the schools, and very little is done across Canada, I am sorry to say. The myth that drug education does not work is based, in my research, on a failure to find the right approach and an attempt to compare marihuana education with the propaganda against tobacco and alcohol, where the situation is different in that the latter two are legal and most parents use them, while marihuana remains illegal and has by no stretch of the imagination reached the same level of use. We can still prevent its spread and discourage its use, if we act now. A massive education program is called for.

In conclusion—and I am sure you are glad that I am getting there—I would like to point out certain facts. During the next few days the United States Senate will hear reports of a tremendous increase of marihuana and hashish smuggling into that country, this past year, with a heavy increase in the chemical content of marihuana, which will be relatively matched in Canada soon if history repeats itself and action is not taken.

On October 7, Dr. Robert L. Dupont, who is in charge of the National Institute on Drug Abuse, the official body attached to the United States Executive Office in the Department of Health announced: "By our estimates, one American in seven has used marihuana"—meaning that at least they have tried it. "Clearly, not all of them encounter problems with marihuana use, but a surprisingly large number of clients in federally funded treatment programs"—and these are the only figures we have at the moment—"35 per cent of them, report problems with marihuana or hashish. About one-third of these report marihuana to be their major drug problem." He went on to list the new scientific evidence of changes in basic cellular mechanism, possibly adverse immunological and genetic implications, et cetera.

They are seeing in the United States the results of longer term moderate and heavy use, which will also come to us a little later, as our volume use started later. This happens because, unlike most other drugs, the harmful chemicals of marihuana accumulate in the fat parts of the brain, genetic organs, and in each cell wall in once a week or more usage.

I would like to do a little on the blackboard with that. The critical problem, I suggest, is not the very few youths who are now in jail in Canada for possession charges—possibly 100—nor the several thousand carrying charges on their records for convictions for possession—mostly fines—or trafficking. I agree these are serious in themselves—I am not disagreeing with that—but these charges can be removed from the records in one or two years, by request. The real problem concerns the tens of thousands of Canadian youth who are trying out drugs, or are tempted, or are being pressed to do so, or are wondering whether they should make a habit of its use and whether they are harmful. This is the real problem. These are the people who need your help and leadership.

Make no mistake, the pressures to produce this bill, and changes in the bill in terms of making it easier in penalties, are based largely on the commonly accepted belief of the relative harmlessness of cannabis. This is the grass roots reality. Almost every parent I have met, and most of the kids, who hear the new scientific facts, are dead opposed to legalization and want strong action to keep the drug away from their children and friends. Read the letter from the Summerside principal and the views of ex-marihuana users, who want stronger not lighter laws. I have found this universally through the hundreds of documents I have had from the kids.

It is no accident that in the early 1920s, Turkey and Egypt, after long centuries of bad hashish experience, successfully brought cannabis under the Narcotic Control Act, through the League of Nations, to prevent trafficking and help them eradicate its insidious influence on large sections of their people. President Nasser of Egypt in 1956 commissioned a team of modern social and medical scientists under Dr. Soueif of Cairo University, whom I have met, to do a year by year study of the effects of the drug on Egypt. The results were so disturbing that the Egyptian government enacted even more stern measures to control

and reduce the use of the drug. Most startling is its year by year evidence of the increase in the use of opium directly related to the years and volume of hashish use.

This is just an aside, but should you invite Dr. Bryant to speak to these hearings, I strongly urge that you hear also from Dr. Paton of Oxford University, Dr. Pollin, head of research of the DuPont office, Mr. David Martin of the United States Senate Committee, who happens to be an ex-Canadian, who served in the Air Force and went South and Dr. Bejerot of Sweden, who is possibly the best known expert on epidemiology and who is known also for his work on cannabis and the law in relation to epidemics.

Because of the evidence we have seen in our schools, of a rapid move from marihuana to the stronger hashish, as quickly as it is available; the clear-cut evidence of potentially serious harm from regular use; a widespread erroneous impression that the new Food and Drugs Act has created, which will cause thousands of Canadian youngsters to start or continue using the drug, I am instructed by the Honourable Bennett Campbell, Minister of Education of Prince Edward Island, who is responsible for the division of fitness and youth and is himself a former teacher, to make the following recommendations on his behalf—and there may be other Cabinet people to follow.

I shall not read through the preamble, but these are the recommendations. In view of the Le Dain Commission's insistence that "social policy should be to discourage the use of this drug"—that was their key point—he recommends as follows:

It is urged that the Senate of Canada seriously consider an addition to the Food and Drugs Act Bill to require that any person arrested for possession of cannabis products and other related offences be placed on probation, in addition to other penalties or warnings given, until such time as the person has undertaken a prescribed course or prescribed readings—

in centres where you could not have a course: on the harmful effects of the drug and can establish for a court officer that they now know—

That does not mean that they agree, but that at least they know:

the serious problems which arise from continuous use.

This is based on the experience of Alberta with drinking drivers, which is very good, where they have enforced this, and experience in Phoenix, Arizona and in a number of other places in the United States where they are using this quite successfully with drinking drivers. Second:

That promulgation of the bill be delayed until a major educational program has been undertaken across Canada to inform the public, especially parents, and school and university age youth of the harmful and potentially harmful effects of the drug,

as has been requested of the Minister of Health by the last General Council of the Canadian Medical Association.

Lastly:

In view of the recognized value of juvenile courts in giving special assistance to youth when required, and in view of the Prince Edward Island Cabinet's approved submission to the Le Dain Commission suggesting that no jail sentences be given for first or second offences for possession of marihuana, with a removal of criminal records possibly after two years, that youth "nevertheless come to understand that this

is a no-nonsense affair" in the eyes of society. It is therefore recommended that possession of marihuana remain an offence under the act and that the Department of Justice be instructed to insure that the courts leave the impression with cannabis offenders that this is a "no-nonsense" matter.

It concludes:

Treating the problem like a traffic ticket fine will only ensure disregard of the law and a great increase in the drugs' use, as has happened in the State of Oregon.

That concludes my presentation, Mr. Chairman. I should like to take ten minutes at the blackboard, to outline the medical evidence—which has been increasingly confirmed—in a way that even I can understand it, and certainly the kids grasp it. In that respect, I am in your hands. Perhaps you would like to have some questions first.

The Chairman: I think we will have questions first. I propose to follow the procedure I established the other day, by which senators will be called in the order in which they ask to be called. The only interjection I will permit will be by way of a supplementary question. Senator McGrand will lead off the questioning.

Senator McGrand: I have two questions. You mentioned that there are several groups in the United States advocating the legal use of marihuana, *Playboy* magazine being one. I can understand that big companies with commercial interests involved in the manufacture of drugs or tobacco would be anxious to go into this area as a commercial enterprise, but what would be the motives of groups which have no commercial interests?

Mr. Cowan: Can I answer that by saying that one of the world's leading doctors—and he asked me not to divulge his name—was approached by a worldwide known tobacco company two years ago to investigate the nature of cannabis, and so forth. As a result of his presentation and what that company knew through scientific evidence, it decided not to proceed any further with it. I would only ask what about other groups who have a lesser sense of responsibility, or groups represented by the Mafia, if you like. We have two teenagers in Prince Edward Island who figured out that an offer they got from Toronto to distribute, not just cannabis but other drugs, would net them \$23,000 within a year.

Senator McGrand: But these are commercially interested groups. What about these other responsible groups who have no commercial interests? Is it because they are not knowledgeable on the subject?

Mr. Cowan: There are several reasons, senator. First of all, to be kind to them, they have not done their homework. Also, I have never met an alcoholic who did not try to tell me that he had a kind of wonderful thing going.

Senator Neiman: A supplementary, Mr. Chairman. I have no brief from *Playboy* one way or the other, but I am disturbed about this allegation made against *Playboy* magazine. What kind of proof do you have to make the statement that people such as Mr. Horton and the other counsel are subsidized by *Playboy*?

Mr. Cowan: I will be very glad to tell you, senator, and I will be very glad to bring the witnesses before your committee. *Playboy* magazine in its January issue announced that one of its functions is the funding of NORML.

Senator Neiman: What about Mr. Horton?

Mr. Cowan: It is all over the United States that Mr. Horton is their most prominent feature in recent weeks. I can show you the newspaper clippings, and so forth. All I can say is that I will be glad to provide you with the necessary information.

Senator Neiman: Through reports which are unconfirmed?

Mr. Cowan: No, it is all open. They do not hide it. I talked with a lawyer from the committee of the Chicago Bar Association, which was promoting a decriminalization bill last summer, and he makes no bones about the fact that he was approached by a committee from NORML which laid before him an impression of marihuana that it was relatively harmless and on the strength of that they went ahead with their resolution. I then asked him whether he heard certain evidence, which I outlined for him, to which he replied that he had not. I do not have his name here but I can provide it. I have no hesitation about that. It is well known; it is not denied. I am sure Mr. Horton himself will tell you that he has responded to many invitations from NORML to appear.

Senator Laird: Mr. Cowan, I venture to suggest that you have been taking a lot of time preaching to the converted, if you are dealing with the problems and the effects of marihuana on one's physical and mental health. However, what we in this committee are concerned with, accepting that as a premise, is the best way to go about minimizing the use of cannabis. You have mentioned some recommendations which, apparently, you have been authorized to make by Mr. Campbell, Minister of Education for Prince Edward Island.

Mr. Cowan: That is correct, senator, and there may be more to follow. Your invitation only arrived a few days ago and this was rather hurriedly prepared.

Senator Laird: Putting all these things together, apparently you find this bill before us reasonably satisfactory, subject to only one exception, namely, that you would have us add to the conviction provisions compulsory education on the harmful effects of marihuana. Is that a fair summation of your representations?

Mr. Cowan: Personally, I cannot quarrel with the bill itself a great deal. I think you are in a trap in respect of trafficking across the border and that you need to look at that. I did not touch on it, but when I read that you could bring stuff across the border for your own personal use for one year, or six months, I had an immediate reaction. I do feel you need to look at that. Overall, the bill is not all that bad. What I do quarrel with is the manner in which the bill was presented, and I do not know what the easy escape from that is. I do not blame anyone in particular, but the effect of the presentation is not from what you said, but the way it is being taken. Walter Lippman years ago spoke of the "image in our minds and the reality of the world around us": what you really have to do is to make sure that in what you are saying you are not simply reinforcing an image, which is what the CMA presentation did and the way the press picked it up. The facts were there, but they were well buried in the presentation. The crisis we are in is that there are tens of thousands of kids across the country who are asking themselves whether they should or should not use the drug, and they are getting an impression that it is harmless.

Senator Laird: Let me try to pin you down on that. What is of concern to a lot of us is the impression some people

are getting. Even some knowledgeable people are getting the impression, somehow or other, that this bill proposes to legalize marihuana. As a person with experience who has read the bill, would you be good enough to say right now that it in fact does precisely the opposite—that it definitely does not legalize marihuana in any way, shape or form?

Mr. Cowan: I agree, senator.

Senator Laird: This is what we have to get across to the public. How would you suggest we get it across?

Mr. Cowan: I would say you have to do something startling, and that is why I come to the conclusion that somehow or other you have to break through this benign image of marihuana. My suggestion is that you do that by having the Prime Minister or the Leader of the Opposition, or even Senator Goldenberg, make a public statement to that effect.

Senator Neiman: The Minister of Health and Welfare has stated this emphatically.

Mr. Cowan: I have not met anyone in any of the schools or in any of the parent groups who took that from what the Minister of Health and Welfare said. He has said that there are harmful effects, but I have not heard him name one specific thing. Kids are not interested in general statements. If I went to a school and said, "Do not use this drug because it is bad for me," the kids would simply say, "Yeah . . .". They want to know the precise harmful effects. They have been brought up on television and science. They want to know exactly.

The Prime Minister, the Minister of Health and Welfare, or someone, has to make a public reply to the impression that has been created across the country—a reply to the effect that the promulgation of this bill is being held up in order that a proper presentation of evidence of a warning nature be completed. Dupont in the United States specifically said in November, "Don't use it."

Senator Laird: We cannot delay the promulgation of a bill which we think is a good bill.

Mr. Cowan: We do it in Prince Edward Island.

Senator Laird: Well, we do not like that idea here. This is a good bill and we want to get it into law.

Mr. Cowan: That is a suggestion. It was one thing that occurred to us to attract attention. If you do not do that, you must find some other way of attracting attention.

Senator Laird: How?

Senator Croll: I suggest witnesses like Mr. Cowan; they attract attention.

Senator Godfrey: Televising the proceedings of this committee.

Senator Croll: That is a different sort of attraction.

Mr. Cowan: I would be glad to speak to that if you asked me to.

Senator Laird: I have one final question. The Canadian Medical Association said that they favoured the retention of penalties for mere possession, but they did recommend that conviction should not be a matter of record. You touched on this, but let us have your views right now about that recommendation of the Canadian Medical Association.

Mr. Cowan: I must go back to a time in our backyard in a Presbyterian manse, where we had an old tent; some of the kids found a couple of packages of cigarettes, and, being youngsters, we went in and all had some. The air was so blue you could not see your hand in front of you. My mother poked her head in the tent; we saw her and jumped a mile; she said, "Do I smell smoke?" Of course, the answer was, "Oh no, nobody smoked," but I caught it properly. However, the point is that kids will experiment, and we don't want to see kids given a criminal record, for experimenting.

Senator Laird: Right. This is precisely what we know, and all we want to be sure of is that we are doing the right thing in this bill.

Mr. Cowan: I do not want the press to take that as my quote, because along with it we very carefully say that there must be given a strong indication of the seriousness of the use of the drug. What are the exact words—"a no nonsense affair"?

Senator Laird: I know what you are getting at. What we need help on in this committee is in finding out whether we are doing the right thing in this bill? Will it be good law?

Mr. Cowan: It will be good law provided you do certain things in association with it. It will be bad law if you leave a wrong impression across the country. You have got many witnesses coming to you. It will be bad law if you leave the wrong impression.

Senator Laird: We have covered that.

Mr. Cowan: It will be bad law if your Department of Justice does not do its job.

Senator Laird: For example, what?

Mr. Cowan: This is the critical thing that is happening. The Oregon police department said that the courts—because they have the opinion their government is going to legalize it—just do not take seriously many cases brought before them. They give warnings, or what have you, but there has to be instruction that this is a serious situation. That is why we suggest the probation system, to create the atmosphere of seriousness.

Senator Laird: Everybody says, of course, that education is fundamental in connection with this drug. In the meantime, we have to deal with the problem that exists.

Mr. Cowan: That is right. Let me go back again. Your problem is not the kids who are in jail. That is one little problem. The problem is not the people who have got criminal records. Don't tell me they don't know what to do. Any responsible judge or his lawyer will tell him in two minutes that he has the right in two years to go down and get it wiped out. Don't tell me that is a heart-breaking sob story sort of thing. What is important is that tens of thousands of kids who are trying it want to know whether they should continue to use it. That is the problem.

Senator Laird: So it is education.

Mr. Cowan: I do not think your bill has done that.

Senator Laird: You don't think what?

Mr. Cowan: If you do no more than pass that bill as it stands, I think you will in effect cause tens of thousands of kids to continue to use the drug, and to use more.

Senator Laird: Should we amend the bill, and if so how?

Mr. Cowan: This is my suggestion. The only one that occurs to us is to put this probation provision in so that it is taken seriously and instruct the Department of Justice that it should be treated as a non-nonsense affair.

Senator Laird: Quite. We accept that. What else?

Mr. Cowan: And, of course, a major educational program must be undertaken.

Senator Laird: Now I think we have got you straight. There must be a major educational program. We go along with that.

Mr. Cowan: It must be well done so that they get the point; not what was done in Michigan, where they went into a classroom and somebody put on the board all the pros of marihuana and all the antis of marihuana, and they ended up finding that people used more of it than ever before. I phoned the professor in charge and asked what they had done; I asked if they mentioned A, B, C and D, that we know by research. He said, "Oh no, because that is not finally proved." I said, "But it is a warning." They also dealt with tobacco and alcohol side by side and the way it was put it actually looked as though tobacco and alcohol are worse, whereas in fact marihuana is a much more serious drug than alcohol and tobacco. If somebody asks me, I will tell you.

Senator Laird: I am glad to hear that.

Senator Rowe: I am more confused now than I was when I came in.

Mr. Cowan: I am sorry.

Senator Rowe: I take it you are against this bill because you feel it is inadequate and should be withdrawn?

Mr. Cowan: No. I am saying it needs more tied to it.

Senator Rowe: Heavier penalties, perhaps?

Mr. Cowan: I am not sure that that is really necessary.

Senator Rowe: By way of premise I have to make a few prefatory remarks, and then I will put my questions. This morning you invoked the example of Egypt.

Mr. Cowan: That is right.

Senator Rowe: There are other Far Eastern and Middle Eastern countries that could be invoked as well. I expect to go to one next week where, if I am caught shoplifting, the penalty will be to have my right hand cut off.

Mr. Cowan: Don't do it.

Senator Rowe: That will be a deterrent. If they cut off my right hand, the next time I will have to use my left hand. Last year in the State of Texas there were 800 marihuana offenders in jail serving an average sentence of nine and a half years, not for trificking but for possession.

Mr. Cowan: Is that true?

Senator Rowe: This is a report carried in *Time* magazine of September 10, 1973.

Mr. Cowan: This could be. I have not been to Texas.

Senator Rowe: You can have a copy of this, if you like. Thirteen were in for possessing marihuana. Lee Otis John-

son was sentenced to 30 years for having passed a marihuana "joint" to an undercover agent. Let me say in fairness that I read an account of that elsewhere, and my recollection is that this was a second or third offence for passing a "joint" to somebody, so perhaps 30 years was understandable. The curious thing about this is that it appears there is just as much marihuana being used in the State of Texas today as there is in the State of Oregon. This is something I do not understand. If lessening the penalty, as the bill proposes in certain instances, is going to encourage and increase the use of marihuana, then it seems to me to follow logically that increasing the penalties, as Texas did over the years, should cut down the use of marihuana, but apparently it has not done it.

Mr. Cowan: Could I add that I found in the United States, and I am not alone, that there is almost a universal feeling that this is a harmless drug. There has been almost a black-out of the new information. That is changing at the moment. The law is not respected if people feel there is no reason for it. I have been giving some of this presentation to police officers in the Maritimes at their request; I find that even the police officers are not aware of some of the serious aspects of the use of the drug, and therefore they do not have much concern about it.

Senator Rowe: There are others, too, as a matter of fact. Let us take NORML for a moment. The composition of that organization is interesting. As I am sure you know, on it there are two of the world's foremost pediatricians.

Mr. Cowan: Yes.

Senator Rowe: I refer to Dr. Marjorie Whittle and Dr. Benjamin Spock. I do not believe these two leading pediatricians are being influenced by the *Playboy* philosophy.

Mr. Cowan: I don't think they have done their homework.

Senator Rowe: I have met Dr. Spock and I do not think Dr. Spock would be influenced necessarily by that, certainly not by the fact that *Playboy* is making money to the tune of \$300 million. In addition to those two, as I am sure you know, there are some other very eminent medical specialists, scientists and legal men, such as Ramsay Clark.

Mr. Cowan: I would encourage you to read the testimony given by Americans themselves about them in the document.

The Chairman: Let Senator Rowe finish his question.

Mr. Cowan: I am sorry.

Senator Rowe: After all, there are three of the leading doctors at the Harvard Medical School and at least one, perhaps two, from Johns Hopkins, on that body. It seems to me that these outstanding specialists are in a position to assess and evaluate the medical and scientific evidence as carefully as, for example, I am. In fact, better. I am a doctor, but I am not a medical doctor. I do not regard myself as being more capable of assessing the medical and scientific evidence than Dr. Benjamin Spock or any one of these members of NORML. How can we explain their attitude on this matter, then?

Mr. Cowan: May I refer you, sir, to the testimony of Dr. Hardin Jones and a number of the Americans, and a little bit to mine which I gave in Washington. I would be glad to give you this volume of hearings on the "Marihuana-Hash-

ish Epidemic and Its Impact on United States Security". You will find these people represent a group who have a very particular point of view. I would be happy to leave it at that.

Senator Rowe: Don't we all? I represent perhaps a group, and I am sure you do, who have a particular point of view.

Mr. Cowan: I have letters from some of the group from Harvard, and their attacks on people are unmerciful and uncalled for, and have been published.

Senator Rowe: I would remind you that I advocated a relaxation of some of the laws. I did not advocate the outright legalization, but I advocated the relaxation, and, believe me, the attacks on me, including threats on my life, were merciless, too.

Senator Asselin: You are referring to me.

Senator Rowe: A couple of weeks ago one of my colleagues in the Senate suggested, and I am sure he was indulging in a bit of hyperbole, to be fair to him, that traffickers in marihuana should be put to death. Even allowing for the hyperbole, that is a pretty severe statement. At the risk of repeating myself, I should mention that my cousin, because he had no choice, gave a young girl the minimum sentence of seven years imprisonment for bringing some marihuana into Gander International Airport. He also sentenced a 19-year old boy a few months ago to seven years imprisonment as well, because he had to enforce the law. If I am not mistaken, he could have sentenced that boy to a longer term than that. The question in my mind now is whether he should have given the higher sentence. Should we do as they do in the Middle East countries—cut off their heads when they are found in possession of marihuana?

If this bill is going to encourage the use of marihuana, if that can be demonstrated, and if it can be demonstrated that marihuana is the highly dangerous substance that it is being held out to be, then perhaps we should be far more strict than we have been. You have said, Mr. Cowan, that it is far more dangerous than alcohol. I have certain figures here supplied by the Department of Health, Education and Welfare in the United States. I obtained these figures about three months ago. They show that 64 per cent of the murders in the United States, 50 per cent of the felonies and 35 per cent of the rapes are related to alcohol. These are not my figures. They are the figures of that department. Well, if marihuana is even worse than that in its effect on human beings and on society, clearly we should not be relaxing the laws; we should be making them more severe. We should cut off their hands, if they possess it, and we should cut off their heads, if they traffic in it. Am I being logical here or not?

Mr. Cowan: Sir, are you familiar with the marihuana slogan of NORML which is found on all the campuses throughout the United States? Do you know what that slogan is?

Senator Rowe: Are you referring to the slogan, "Liberate marihuana"?

Mr. Cowan: What does "liberate marihuana" convey to you?

Senator Rowe: You say that it is the slogan of whom?

Mr. Cowan: Of NORML. I have the sticker here. You will find a set of stickers on the back page.

Senator Rowe: Oh, yes, yes, I am quite familiar with that, and I am quite familiar with *Playboy*, too.

The Chairman: At this point I think I should ask Senator Neiman to begin her questioning.

Mr. Cowan: If I may make one point concerning alcohol, Mr. Chairman, alcohol is the senior drug problem in terms of major difficulties, because the amount used is so overwhelmingly greater. But statistics like that are not the point. The point is, what is going to happen ten years from now, if we have a progression in the use of this drug which is similar to what has happened in some of these other countries? That is why we must look at it seriously now. That is why we must let science warn us in advance. That is the purpose of science.

Senator Neiman: Mr. Chairman, I should just like to recapitulate briefly. I understand that Mr. Cowan is in general agreement with the bill as it is, with one possible exception with which I will not deal now but which has to do with the importing provision. In general, Mr. Cowan, you agree with the provisions of the proposed bill?

Mr. Cowan: With the proviso of the instructions to the Department of Justice with respect to its being a no-non-sense matter.

Senator Neiman: Right. I will get to that. You did make the statement that you do not approve of youngsters getting a criminal record as a result of a criminal conviction under this proposed act.

Mr. Cowan: Let me clarify that. Our government recommendation was, and it has not been changed, that at the end of one or two years—it does not really matter—a criminal record for possession or for trafficking, or for whatever reason, among young people, should be wiped out providing they have not come before the court in the meantime.

Senator Neiman: Automatically?

Mr. Cowan: On application or automatically; it does not matter to me, providing there is no court evidence against them.

Senator Neiman: Right. So you are saying that we should perhaps go one step further than the present law. At the present time the record can be wiped out on application under the Criminal Records Act, to which, apparently, there will be some slight amendments.

Mr. Cowan: Let me say that I would tend to recommend that there be some form of application and that it not be automatic.

Senator Neiman: That is what we have now, Mr. Cowan.

Mr. Cowan: I would tend to think that some form of application would be a little safer, provided that you actively contact the person to let him know his rights.

Senator Neiman: Have you had an opportunity to read the CMA brief which was presented to us?

Mr. Cowan: Just casually and briefly. I have had a glance at it, but I have not studied it.

Senator Neiman: Then you are aware that in fact the CMA did stress quite strongly the medical factors, the problems, the potential dangers, and that the position has not really changed?

Mr. Cowan: Yes.

Senator Neiman: And that the only essential thrust of that brief was that they did recommend on social grounds that the offence of possession be decriminalized.

Mr. Cowan: Yes.

Senator Neiman: You are not prepared to go quite that far, I gather?

Mr. Cowan: Well, I guess I have not enough studies to support it one way or the other. I am a little leery of automatic removal, without some contact with the person. That is all I would say.

Senator Neiman: If this Senate were to produce such evidence that in fact there is serious social detriment, would you be prepared to consider that evidence and possibly change your mind?

Mr. Cowan: Serious detriment, in what sense?

Senator Neiman: Let us go back to the figures, Mr. Cowan, and I am constantly using these figures because they are the ones given to me. According to the figures for last year, we had approximately 22,000 convictions in cannabis related offences, whereas we know that there is approximately one million people who will try it. As you said yourself, youngsters will experiment; other people will use it, for one reason or another.

Mr. Cowan: Yes.

Senator Neiman: The obvious social problem there is that you are touching and in fact criminalizing, a very small segment of our society. Do you consider this just?

Mr. Cowan: I must say that the word "criminalization" has become a communication cliché.

Senator Neiman: I am asking you if you consider the fact that we will criminalize only one-fiftieth of the offenders—and they are considered criminal offenders and will be considered criminal offenders. Do you consider this just?

Mr. Cowan: I do not accept the emphasis which you put on "criminal," because I do not think society attaches to the casual use of marihuana the same kind of feeling of criminality that society attaches to a person who, say, robs a store.

Senator Neiman: But, Mr. Cowan, are you not contradicting yourself? You have also made the statement on several occasions that you want our Department of Justice to stress the fact that we must take this far more seriously, and you want them to take their job more seriously.

Mr. Cowan: It is a no-nonsense affair. In other words, the judge, even when he is saying to an accused, "I am letting you off now," should also be saying, "I caution you that we take this very seriously."

Senator Neiman: Of course, but how about the fact that we do not have the forces, we do not have the ability, literally, to apprehend and process through the courts one million offenders? Do you want us to put up one-fiftieth of the people of Canada as the terrible example for the rest?

Mr. Cowan: I would not want to be arrested for every time I have speeded.

Senator Neiman: That is right.

Mr. Cowan: But we do not change the speeding laws just because there are occasions when we speed.

Senator Neiman: But do you think it is fair that a small segment of a special group of our society is penalized?

Mr. Cowan: I cannot accept the premise of the question in the manner in which you put it, because I do not think it is correct. I would counter that by saying, are you equally pre-occupied about the fact, that if you do not have some check, thousands of kids will get into health trouble from using the drug?

Senator Neiman: That is why we are here, and that is why we are considering this legislation in depth.

Mr. Cowan: That is my concern.

Senator Neiman: It is the concern of everyone in this room. I must stress again that we are going to have a variety of groups brought here who will be just as concerned as you are with this area, who take just as strong a view as you do, who will bring expert witnesses, and will have witnesses that will take quite a different point of view, and who will do it with equal expertise and equal concern. We are looking at the social problem here.

Now, I would like to speak briefly to another point that you are making. You stated that we are having a crisis in communications. I quite agree with you that we are having a crisis in communications. Why do you insist, however, on putting the onus on the Department of Justice? Surely it has to be on our Department of Health and Welfare as well?

Mr. Cowan: On all of them.

Senator Neiman: Yes. And do you, as an employee of a provincial government, at this point, not realize that the greatest onus must be on provincial departments of health? We deal at this level with the law, and I agree that our departments here must work with other departments; but the onus must be on the provincial departments. I know that you are going around to the schools, but can you tell me what other action the department of health of the province of Prince Edward Island is taking, what your solicitor general and your attorney general are doing for your province, to deal with the problem as they see it there? What is the correlation?

Mr. Cowan: Our presentation to the Le Dain commission came from our department of justice, which is one of the things we have done, and they have maintained at all meetings in Ottawa that original position. I cannot speak for the matter of treatment in the courts. I think it has been a little mixed. I would rather not speak to that, because I do not have the figures, I am sorry. But they take it seriously.

Senator Neiman: This is a government onus in the province of Prince Edward Island.

Mr. Cowan: Yes, yes. I am sorry if I have not stressed strongly enough that, in our recommendation B, that the promulgation of the bill be delayed until a major educational program has been undertaken across Canada, that implies the departments of health, education, and so on, of the provinces.

Senator Neiman: I agree, and I believe you are going to get leadership from the federal Department of National Health and Welfare. They are working on this.

Mr. Cowan: I do hope so.

Senator Neiman: I must say that I think you will get all the assistance and co-operation you need from that department.

Mr. Cowan: Not six months ago, but possibly today.

Senator Neiman: The principal thrust has to come from the provincial governments and the provincial departments.

Senator Rowe: Mr. Chairman, this is supplementary to a question put by Senator Neiman. The witness said, as I understood him, that the problem was not so much the kids in jail, but the thousands outside jail.

Mr. Cowan: I am not denying that those jailed are also a problem.

Senator Rowe: This is the question I want to ask. You say you want a no-nonsense approach, but is not a seven-year sentence for a 21-year old girl a no-nonsense approach? Or should it be 21 years, as she might have got in Texas?

Mr. Cowan: That is a terrible sentence, but it has nothing to do, sir, with what I am proposing.

Senator Rowe: Are we concerned with drugs, or with human beings? Are we concerned with the fact that a 21-year old girl, after a seven-year sentence, will come out with that stigma for the rest of her life? She can never become a teacher, she can never become a nurse, she can never study law—well, she can study it, but she can never become a lawyer—she can never become a doctor, and in fact, she will probably have trouble getting a job anywhere except at the most menial level. Furthermore, during her period in jail she will probably be sexually abused, and she will be lucky if she does not come out a sexual pervert.

Mr. Cowan: From what you have told me I am dead against that sort of thing.

Senator Rowe: If you multiply that girl by many thousands of other young men and young women, and boys and girls of 17 and 18 years of age, in Texas, in Ontario, and Newfoundland—if you multiply that by hundreds and thousands whose lives have been ruined, and who come out not only deficits, liabilities, but absolutely hostile to the society which destroyed their lives, and it is very serious, are we not concerned about that, too?

Mr. Cowan: Well, sir, I know two people who were sentenced for trafficking—young people involved in the university—and both of them have come out very chastened by the whole experience. However, I am fully in accord that anybody who gets a seven-year sentence for possession, or for a minor—

Senator Rowe: But this is the law of Canada.

Mr. Cowan: We are not arguing about the change in the law.

Senator Rowe: But this bill is changing that law.

Mr. Cowan: You are putting words in my mouth that I have never said. I am not arguing about that. It has nothing to do with what I am talking about, sir, with all due respect.

Senator Godfrey: Mr. Chairman, may I make a comment? I have heard about Senator Rowe's girl with the

seven-year sentence many times. On the other hand, we did hear from the RCMP that they did not charge people with importation when they brought in only enough of the drug for their own consumption and use. The only time they charge people, and they are the only people who get seven years, is when the drugs they bring in are of sufficient quantities to show that they were trafficking. Senators Rowe is not in the box, but I would like to ask him how many pounds of marihuana his seven-year girl brought in.

Senator Rowe: How many pounds can you put inside a cast on a broken ankle?

Senator Godfrey: I do not know, but I want to get that straight. We have had that evidence from the Mounted Police, that they did not charge people for simple possession. They do not charge for simple possession when the purpose is to import for their own use. Let us make that clear.

The second thing I would like to comment on in a supplementary way is something in Senator Neiman's remarks which we have heard before, about being unjust that only one-fiftieth of the people get charged, of the million users of marihuana. The evidence we had from the police in that respect was that they use their discretion, and that if they charged everybody they found in possession of marihuana, there would be four times as many people charged each year. They also said that in fact they only charged those who were flagrantly using it in public, and so on. I approve of the police having a discretion to charge only one-quarter of the people, if the people who are not being charged are doing it discreetly. If somebody goes around flaunting what they are doing in public, they are asking for trouble, and they are the ones, I gather from the evidence we have had, who are being charged. I am not so concerned about them.

We did have positive statements from the Canadian Medical Association that there was no evidence that the casual use of marihuana was dangerous, or caused difficulties. I do not think they really defined what casual use is.

Mr. Cowan: They were careful not to define it. I will define it for you, if you wish.

Senator Godfrey: I have been asked by quite a few young people who have spoken to me—and this is a subject in which they are very interested, and they want to know about it—at what point they are running into danger. You made a statement that it was once a week. Is there any medical evidence on that?

Mr. Cowan: Could I take five minutes on the blackboard here, Mr. Chairman? Would you be agreeable to that? It is something that I do with the kids, because it brings out this point.

The Chairman: Well, make it as short as possible, because there are other questions, and we are approaching the adjournment.

Senator Godfrey: This is an important aspect because the vast majority of the people using this are casuals, so we should know at what point it stops being casual.

Mr. Cowan: The problem with the word "casual" is that that is what happens at the start, but most people progress so that a once-a-day use among regular users of cannabis is

nothing. Once or twice or three times a week is mild. What we do know is that it stays in the fat system of the body, that it dissolves in fat but does not dissolve in water like alcohol which passes out of the body in six or eight hours—provided you only take one drink. Its metabolites stay in the body for eight to 18 days. So if you are taking it even only once a week, even though it is slow, you are beginning an accumulation process. Now what Dr. Stencherer found—and this has been verified by the Swiss research and by the Columbia University research—is that once-a-week users, and users of more of course, over a period of a year of regular use, have significant and medically unacceptable chromosome breaks. That was the case in 60 per cent of the cases; the other 40 per cent did not show this and nobody knows why.

When I am talking with the kids I draw a couple of ears, and they guess that they are the ears of a mouse, and then I draw this mouse and they give it a name. We have to be careful not to give it the name of a girl in the class—one class suggested to me a name which happened to be that of a local teacher who was pregnant, and this caused a great deal of fun. So we call the mouse Fifi. I met Fifi in New York in Dr. Lynch's laboratories—St. John's University—this work will be published in the next six months or so. The whole pharmacological world is waiting for it. For three minutes a day Fifi was getting the human equivalent of slightly less than one joint of marihuana per day and she was expecting. The first generation is born—They have thousands of these that they have experimented with over several years. The first generation is perfectly healthy, at least in appearance, and are given no further marihuana. These then are cross-bred and produce the second generation. But every third one of these has a significant deformity. It is passed through the system, and this is scaring the heck out of many people in the genetic world. The deformities will be listed in the publication which will come shortly from Dr. Lynch and are as follows—a significant deformity in the jaw, a deformity in the kidney which is malfunctioning and a cleft palate. I have seen these myself. In Europe where studies were made by injections, they have had thalidomide-like babies with no legs and so on. This has been done over and over again. They have also used tobacco smoke and hot air and then they get none of this. The reason being as follows: As Dr. Paton has so carefully shown, and it was shown in the Savannah conference of pharmacologists in December, the cell wall in all the cells in the body, is a very complex mixture of lymphit or fat, and being fat, marihuana leaves a deposit in the cell wall. The manner in which it attacks the cell wall is to form little globules, as a result of which the continuity of the cell wall is lost and you open it to things going in and to things going out. Every cell in the body contains a DNA with five million signals, which is the total you need from the moment you are conceived until the moment you die, even to get your toenails to keep growing. Every signal you need is there. The tiniest, the minutest amount of marihuana, as Dr. Zimmerman showed at the University of Toronto, begins to interfere with this signal system and when new cells are formed with even the tiniest amounts present, the new cells is deficient in DNA. This they feel is the reason for these deformities and it is also the reason for the brain problem. In the lower part of the brain which is called the hippocampus, which happens to be the higher part of the mind, there is a high concentration of fat, and what they have discovered in monkeys and in humans—

Senator Asselin: Are you still talking about marihuana or about all hard drugs?

Mr. Cowan: Only marihuana. Marihuana and hashish are the same chemically, so we are talking about the same thing. It is deposited, from regular use, in that part of the brain, so that you get a build up, just as you do where there is a high fat content in the ovaries and in the gonads and in other cells of the body. This part of the brain, through long experimentation, is now known to have an effect on memory, motivation—because possibly it deals with the pleasure centres—and perception. That is the part that gets all screwed up in this business. A McGill girl told me last summer—her father is a doctor—after I had explained the evidence, “it is interesting; among my pals in first and second year at McGill”—she is in the top course—“a lot have stopped using marihuana because they noticed that when they were studying and using marihuana, and when the time came to do a test, they could not remember what they were studying,” due to this interference with transfer from short to long-term memory.

There is also an enormous amount of recorded research, both historical and modern, all over the world of persons who gradually, through the steady and continued use of this drug—a few times a week—begin to lose their motivation to do things. Of course, in a person with a tremendous amount of motivation this is not going to show itself quickly. A man with a memory like Winston Churchill is not going to show it immediately either, but in ordinary students, and we have tested 3,000 students in P.E.I., we have discovered a significant relationship between their marks and the use of marihuana. On top of this—I don't know if this has already been told—the famous Masters and Johnson's Institute was very startled to find that men were coming in to them in St. Louis suffering from impotence and failure to produce in the family—they were sterile—and they were losing their sex feelings. They noticed that many of the men were heavy or moderate, but regular users of marihuana. They discovered that at a level of 10 joints of marihuana a week in regular use, they were getting a startling 44 per cent reduction in male hormones, and some of them were growing breasts. Don't tell me that this is not causing some fun among the kids.

The drug also causes other specific cellular damage. There appears to be brain damage, and strong evidence of this is accumulating as the magazine *Science* indicates. It says that we need to take seriously this evidence of brain damage, it probably happens because the drug accumulates here in this part of the brain, as I show, and attacks the cells. You may not know, and the kids don't know, that the brain is the one part of the body where cells are not replaced. If a man over a period of years is loading up on this stuff, then he is breaking down brain material. That may not show for many months or two, three or more years.

Senator McGrand: You have discussed what could happen with the deformities that could come from the changing of the chromosomes and the structure of the cells. That could lead to mutations, could it?

Mr. Cowan: Yes.

Senator McGrand: As a result of which you could have a whole generation of people with defective memories or worse?

Mr. Cowan: One of the problems is that there may be a shortage of male hormones or impaired cells, in the growing fetus within the pregnant woman as a result of her use of cannabis, which could disrupt the growth of the proper

male characteristics in a male fetus. Geneticists in my presence have discussed their concern about this possibility. This will take a number of years to work out on the human side. All we are saying now is that the warnings are very very strong and that present absence of evidence of deformed babies does not mean a thing. As Dr. Paton says, the potential mechanism to cause brain damage and birth deformities has now been established.

Senator McGrand: But there is a difference between deformities and mutations, is there not?

Mr. Cowan: I am getting out of my depth.

The Chairman: He told us that he did not complete medicine.

Mr. Cowan: No, sir; the war interfered.

Senator Rowe: I am very interested in what you have to say with respect to the experiment carried out on Prince Edward Island. What was the age group of these students?

Mr. Cowan: The middle grades of high school.

Senator Rowe: What percentage of them had used marihuana? I do not suppose they all had?

Mr. Cowan: No, there was a small percentage who had used it at that time, which was three years ago. It was computerized and taken up with some very key men in the psychological profession in the United States, in order to ascertain the correctness of it. I am sure that Professor Love will be glad to attend and testify to that study. I cannot speak for it, other than to say that we have good, solid reason to believe that it is valid, particularly since we know the facts I have outlined on the blackboard. Time and time again the student counsellors tell me that the kids who are using the drugs find their marks dropping off.

Senator Asselin: Mr. Chairman, I do not wish to discuss the medical exposé and presentation of the witness, because we have heard experts speaking to the contrary. I just wish to ask a very simple question: Do you think, sir, that this bill will be a better deterrent in preventing the use of marihuana than the law as presently exists?

Mr. Cowan: If I were to answer that question, I would have to say I could not be sure. I would say that at the moment the impression the bill has on the public is causing more use of marihuana. In my opinion, this legislation would create more use of marihuana, unless something were done with respect to its other aspect, which we have already discussed.

Senator Asselin: But do you find anything good in this bill?

Mr. Cowan: Well, sire, whom do you represent politically?

Senator Asselin: The Opposition.

The Chairman: Mr. Cowan, you are here to answer questions, not to ask them.

Mr. Cowan: It contains a lot of good, I am sure. We are all searching for a solution, sir, and I am not sure that anyone has the full solution. My wife tells me that she gets the impression that I think I have, but she and I both know better. However, I believe that you are on the track of something, but the traps in it are very dangerous. This is

particularly so with respect to the manner in which it has been treated throughout the country, causing impressions created by communications.

The Chairman: Thank you very much, Mr. Cowan. The committee will now adjourn until 2 o'clock, at which time we will hear four witnesses. One is an advisor to the Ontario Probation Service. Three representatives of the Department of the Solicitor General will also appear, including a member of the National Parole Board and an officer of the Criminal Records Division. That is a topic of interest to us.

The committee adjourned until 2 p.m.

Upon resuming at 2 p.m.

The Chairman: Honourable Senators, as I said earlier, we have four witnesses this afternoon. The first is Mr. Norman Panzica, Youth Consultant to the Council on Drug Abuse, the Ontario Probation Service. The other three witnesses will be representing the Department of the Solicitor General. Mr. Panzica, would you first tell the committee your qualifications in this field.

Mr. Norman Panzica, Youth Consultant to the Council on Drug Abuse: Thank you, Mr. Chairman. I must first apologize for my gross ignorance of procedure. I had no idea, before I arrived, that there were methods by which a brief could be run off. I did not know that until 20 minutes ago.

The Chairman: Which perhaps shows lack of confidence in the Senate.

Mr. Panzica: I should prefer to put it in the Sicilian manner, sir, and say it would not be my wish to cause any difficulty, hardship or inconvenience to this body.

First, I am not an expert on anything. I am a very ordinary citizen of Ontario, born in Welland, the very heart and soul of the province. I was, for many years, a journalist. In the course of my journalistic duties, it was necessary for me to locate, for CBC journalism, a drug addict. I did not know what a drug addict was. I am not sure that today I know what a drug addict is. Fifteen years ago, when they told me to find such a person, I found myself a theology student at Knox Presbyterian College, who promptly found me a heroin-addicted streetwalker. It was quite legitimate. He was a detached worker whose job was to go and listen to people to whom no one had ever listened. To make a long story short, one late winter night at the end of 1959 or the beginning of 1960 I found myself in the presence of a tall handsome theology student, a 55-year old policeman and a 23-year old heroin-addicted prostitute.

The honourable senator had asked me earlier my age. I am 41 years old, but I can tell it to you another way. I am so old that I can remember a federal government inquiry into drug addiction in Canada that was light years ahead of the professionals, of the experts, of the doctors and of the cops. The Senate inquiry of 1955 knew what no one else knew, that the Canadian junkie is a crook first and gets into drugs later.

We did not know that. We discovered it anew, some five years after the Senate knew it. It occurred to us that if criminality causes heroin addiction, if a prison is the best predictor of heroin use, then logically we should get the young lady away from the criminal environment to some more suitable district.

My wife is not from Welland. She is from Rouyn, Quebec, and had a very simple-minded solution—that I should bring the lady to our home for a few days while we figured out what to do. The few days became several months and one hooker led to another, and another, and another, until at last I am the only 41-year old, baggy-eyed Sicilian, who has raised 51 teenagers, one at a time—and that does not include my own four.

When the mid-1960s came, there was a new syndrome, the multiple drug user, the young head. This person was as different from the old-time junkie as he could possibly be. He was younger by far, and despite the fact that he was younger, he had more education. He scored better on IQ tests. He had two parents, and in fact two parents who lived together and who were legally married. He had never been in a jail, he did not use narcotics, but was, in fact, a multiple drug user. He was middle class, he was upper middle class.

We thought, with the night and day difference, could we possibly help this kind. It turned out there was not a lot of difference. There was in each case hopelessly inadequate self-esteem.

Somewhere along the way I picked up a couple of degrees in psychology, which are infinitely less relevant than the number of quarts of vomit that we have cleaned up in our 15 years. I apologize to the gods of social work for being uncool and for making value judgments. In 15 years I have watched four of them die, I have watched an awful lot of human suffering, and I am compelled to say that some things are flat out wrong, some things are bad, some things are good.

The third kind of drug addict that we have worked with did not appear until 1971. If I were to say to this august body that I have seen a pregnant man, it would do to your minds what the phrase "square John junkie" does to my mind. Here is a person who is not yet 20, who has never been in jail, and who is on heroin, and who used to smoke marihuana.

You may imagine the difficulties I had with the Americans. They kept saying all the heroin addicts used to smoke marihuana, and I kept saying that I never saw a heroin junkie who ever touched marihuana in his whole life. They were not wrong, and I was not wrong. We were saying what we believed to be opposite things, but, in fact, we were not. It turned out that marihuana leads to heroin in California, in Florida, in New York, in the State of Washington, in Nigeria. In fact, marihuana leads to heroin, it seems, only in those places where you go to the penitentiary for having marihuana. So, in fact, we were saying the same thing. We said penitentiaries predict heroin use, and we were right. They said marihuana predicts heroin use, and they were right, because they sent the marihuana users to prison.

There have been special studies also in personality development. I have studied under some of the best in the business, shamelessly picking their brains for nothing. It is not possible, however ignorant I am, to work with 400, live with 51, and read everything in sight for 15 years, without conceivably learning a little bit. I am not sure, Mr. Chairman, whether I have adequately identified myself.

The Chairman: Very well.

Mr. Panzica: I might add that I am unemployed. I am a consultant to the Ontario Probation Service, consultant to the Council on Drug Abuse in Canada. A few times a year

the Department of National Defence avails itself of my services, and I am a lecturer at Humber College. A consultant is defined as a fellow we don't mind hiring for a day or a week, but there is no way we are going to give him a job. Accordingly I am unemployed.

This brief, which I am respectfully presenting today, was prepared through the generous cooperation and assistance of CODA, the Council on Drug Abuse. They let me work on the brief on their time and with their facilities, and wound up at the last in endorsing it. So that except for certain specifics, it is a reasonable statement that this brief I present is the position not only of myself but also that of CODA, the Council on Drug Abuse, which is also making my appearance here today possible.

What I am grateful for is not that you flatter me beyond my worth by having me in this room, although that is true, but more for a chance to say something where it counts. I do not envy you your task. With a gun at my head and someone saying, "Yes or no to Bill S-19 as it now stands," I would really have to think it over. Accordingly, if there is a desire or a requirement for some simple-minded hatred of the bill, some passionate love of the bill, I must disappoint such a person. The issue is just too complicated.

Perhaps I should mention that I have discussed drug abuse in question and answer seminars with more than 300,000 people across Canada. These audiences have ranged from religious groups to students, prisoners, psychiatric patients, and to professional workers like probation officers. In the young people, it is beautiful; there is a marvelous regard for common sense, which I think augurs well for the future.

Among ordinary adults, like myself, I am finding a growing impatience with what is seen as a tendency to ignore or demean basic values, such as, for instance, the institution of the family. I would not presume to set myself up as a spokesman for them, but I find myself agreeing more and more that while we must be humane, we must set no limit on the amount of energy, effort or money it takes to fix a human being. The corollary to this, the siamese twin forever wedded to it, is that we must do nothing, nothing at all, which encourages people to mess themselves up. So let me begin with a simple enunciation of certain principles, none of which makes me unique.

I do not approve of imprisonment for first offenders, especially those under the age of 30. No one impulsive act, no one reckless hour, should ever brand or burden a Canadian for the rest of his life with a criminal record.

I agree with the scientific bodies that have unanimously found cannabis to be a dangerous drug of significant public health concern. Anything which makes more likely the non-medical use of drugs is simply wrong.

The government or the press, or those like me who have access to many audiences, or perhaps all of us, failed to make known a few simple realities, one being that a person who uses cannabis will rarely, and/or with mature discretion, will simply never be caught.

In Canada, no first offender goes to jail for simple possession of cannabis. Our pardon laws and the use of conditional and absolute discharges mean that no one need carry a criminal record for life for a single event or single set of events. Accordingly, I was truly surprised to read the December 5 speech by the Honourable Senator Neiman a statement that we have in Canada, and I quote: "a system of mandatory severe sentences for simple possession." Per-

haps the version I have puts this statement out of context, or somehow misrepresents it.

May I respectfully remind honourable senators that more than 13 years ago, under the famous September 15, 1961 legislation, mandatory jail terms for simple possession were removed from Canadian law, a step I heartily endorsed then and now. Since 1969 the Crown has been able to proceed on simple possession by way of summary conviction, and in 1970 the Department of Justice told its prosecutors to proceed on summary conviction except in extraordinary cases. In July, 1972, the Criminal Law Amendment Act introduced the discharge provisions, and within two weeks of the enactment of that law the same department instructed all its prosecutors to press for such discharge in cases of possession of cannabis where the person had no previous record. So I wonder: to which mandatory severe sentences did the honourable senator refer? I am not a lawyer; perhaps I misunderstand either the import of the facts I have cited or the precise meaning of the quotation to which I have referred.

In the same speech, it was said that Bill S-19 would retain "stringent penalties" for certain offences, including possession for the purpose of trafficking. But in the "expanded explanatory notes" for Bill S-19, it is made clear that in respect of the offence of possession for the purpose of trafficking, a discharge could apply. I do not believe that the majority of Canadians would regard a no-jail, no-record, no-fine disposition as a "stringent penalty". Assuredly, I do not.

The Honourable Senator Neiman on December 5 said she believed there is, "general acceptance that the law has been unnecessarily harsh on persons involved with simple possession." This is clearly not the impression I get from most students or adults.

A slightly more subtle objection to Bill S-19 and the way in which it has been presented to the public falls in the category of the truth which is an untruth. In news releases, in speeches, in letters, in the question-and-answer statement provided with the release, over and over again we are told that the transfer of cannabis will be to the Food and Drugs Act which controls "substances with great potential for harm such as LSD." While that statement is, strictly speaking, true, the impression it conveys, surely, is not.

This leads directly to my primary objection to Bill S-19. I rejoiced, literally, in 1972 when a position I has held for 10 years seemed to be adopted, not only by the government, but by the two leading parties in opposition. The assurances gained from those sources delighted me: there was no intention of legalizing marihuana, and cannabis would be taken from the Narcotic Control Act and moved to the Food and Drugs Act. I rejoiced. I could scarcely set aside feelings of shock when I found that this transfer was not a transfer at all, but rather the creation of a new, special, separate category for cannabis which would give the courts less freedom than they now have with LSD. The court, with its examination of the offender and his record, if any, with the help of Crown and defence counsel, and sometimes expert witnesses, would not be able to sentence the possessor to even one day in jail on his 187th conviction. I have testified in many courts and I trust our judges. In simple terms: I thought it meant that cannabis possession would be treated like LSD possession. But now I find that the law would say, by implication, of course, that marihuana is somehow less dangerous. The truth is, it's simply less dramatic in its acute effects than LSD.

Since I confidently assume that no person could rise to the position of cabinet minister or senator unless he or she were a scrupulously honest person, I wondered how I attained this impression. Through the considerate initiative of my excellent member of Parliament, Charles Caccia, I was sent a great deal of material. In the kit I found the answers I wanted. I found in a 1972 policy statement of the Honourable John Munro, Minister of National Health and Welfare as he then was, the following words: "The transfer of cannabis from the Narcotic Control Act... is designed to distinguish clearly between cannabis and dangerous narcotics such as heroin."

His learned successor, the Honourable Marc Lalonde, wisely told the Canadian people a few months ago: "The Government regards marihuana as a dangerous drug that is more serious than a lot of people thought." The honourable minister said this, following upon the words of Mr. Le Dain, Chairman of the Royal Commission of Inquiry into the Non-Medical Use of Drugs: "Marihuana is more dangerous than we thought at the time of the inquiry." These statements show that these two distinguished gentlemen are cognizant of the many researches of the past few years showing dangers attached to the use of marihuana not known when the Commission's Interim Report was tabled on July 19, 1970.

But Bill S-19 does not seem to be aware of the information gained in the past five years. House of Commons debates for July 19, 1970 show the Honourable Mr. Munro saying that simple possession of marihuana could be prosecuted as an offence not subject to jail terms, with a system of graduated fines for first and subsequent offences. I frankly cannot see how Bill S-19 differs from that position of 1970, when our government acknowledges that marihuana is more dangerous than it then believed.

May I turn now to the chart at page 5 of the question-and-answer document, showing the penalties as they are, and as Bill S-19 would have them. In Clause 1, simple possession, summary conviction, a fine of \$500 on first offence with no option of a jail term is hopelessly inadequate. The present law calls for a fine of \$1,000, imprisonment for six months, or both, which parallels exactly the Food and Drugs Act's existing requirement for possession of LSD, MDA, et cetera.

On a subsequent offence, the fine under existing law for cannabis and under existing law for LSD, MDA, STP, et cetera, is again the same, a fine of \$2,000, imprisonment for one year, or both. Bill S-19 sets out a fine of \$1,000 regardless of the number of previous convictions, with no opportunity for the court to order a term of imprisonment, and it is the opinion of myself and the Council on Drug Abuse and many others that this, too, is simply inadequate. Both these deficiencies would be corrected if marihuana were in the section now governing LSD and other dangerous non-narcotic drugs.

That there is no option to proceed on indictment for simple possession, regardless of previous convictions, is good law and we heartily endorse this provision.

Clause 2 deals with trafficking. Bill S-19 would set penalties comparable to LSD on summary conviction. While I find this slightly too lenient, it is a compromise with which CODA and I can be comfortable. On conviction for trafficking by indictment, I find the maximum 10 years too lenient and not consistent with the bill's avowed purpose of dealing "severely with any source which attempts to make the substance widely available."

Clause 3 deals with possession for the purposes of trafficking. Here I need clarification. The question-and-answer document says that possession for the purpose of trafficking shall carry penalties identical to trafficking. But possession for the purpose could lead to a discharge. If this means that one convicted of trafficking may get such a discharge, then the provision is absurd and, I am sure, totally unacceptable to most thinking Canadians.

Clause 4 deals with importing or exporting. Here again I am confused. We are repeatedly told that it is unjust to sentence to the minimum seven years some young person with a few marihuana cigarettes. Most assuredly, I do not favour minimum penalties, again because I trust our courts. But surely no person has even been sentenced to seven years for importing a trifling quantity. It doesn't happen. We have seen case after case where cannabis has been seized minutes after the arrival of a non-stop trans-Atlantic flight, and the only inference is importation, but the charge laid is either possession or possession for the purpose.

In the matter of importing or exporting, the courts would be unduly hamstrung by Bill S-19. No penalty between two and three years is available. On summary conviction an inadequate maximum of two years applies. On indictment the inadequate maximum of 14 years applies, along with an inappropriate three-year minimum. Considering probation and the fact that a one-day jail term is legally a sentence of imprisonment, I do not believe that there ought to be any provision for summary conviction on importing or exporting.

In this connection the Honourable Warren Allmand, Solicitor General, on November 12, 1974, told the House of Commons that, with importing and trafficking of cannabis, there had been new developments. His statement does not convey to me the image of some innocent youth with a single cigarette in his jeans. May I quote him:

In the recent past those primarily involved with the importation and trafficking of cannabis were younger entrepreneurs. During 1973, five gangland-style murders in Montreal were directly connected (with) importation of hashish".

The honourable minister added that there was clear evidence of interest in importing cannabis on the part of "major criminal organizations". As most of the rest of the world becomes more stringent—and it is instructive, honourable sir, to poll the embassies of other countries and see what they are doing—our increasing leniency makes Canada all the more tempting to criminal syndicates as an area of trans-shipment.

On section 5, cultivation, the new provisions suggested by Bill S-19 are perfectly acceptable to CODA and certainly to me and I find the addition of a chance to proceed by summary conviction a major improvement. Another improvement is the increased maximum on indictment. While certain added choices would be made available to crown and court by Bill S-19, I cannot agree that Bill S-19 would give them more flexibility.

The submission of the Canadian Medical Association, while I agree in general with much of it, makes a grave error in judgment when it seeks automatic erasure of the criminal record for those found guilty of simple possession. This organization of clinicians knows of the apathy that often results from the chronic use of cannabis. They know the dangers of denying a person true knowledge of the natural consequences of his own actions. To suggest that

applying for a pardon is too much work is to encourage the very syndrome of inadequate self-esteem that has characterized virtually all of the nearly 400 drug abusers I have worked with.

In the matter of the tired old analogy between marihuana and alcohol, may I state that decriminalization of marihuana would surely not eliminate or nearly eliminate alcoholism. Adding one intoxicant to another does not help things. In 15 years I have never met a smoker of marihuana who did not use alcohol for the purpose of getting high. And there is good evidence, as is well known, for instance to the honourable Senator Sullivan and most physicians, that marihuana intensifies the effects of alcohol. The difference between the two substances is really very simple. In the words of the distinguished scientist Harold Kalant of the Addiction Research Foundation, 95 per cent of Canadians who use alcohol appear to suffer no harm. Alcohol is indeed a dangerous drug and can be used as an intoxicant. But marihuana has no other purpose. I have never met anyone who smoked marihuana because it tastes good.

By your consent, I shall be leaving with the Senate office 75 copies of an article from *Chitty's Law Journal* which discusses the relevance of the prohibition of alcohol to the marihuana question.

There is next in my brief a portion which, by the Chairman's gracious consent, I would ask not to read unless Senator Asselin is present.

Senator Asselin: I am here.

Mr. Panzica: Thank you, sir; may I proceed?

May I presume a little more on the good nature of this august body to go beyond Bill S-19 and remark, with respect, on the published statement of the honourable Senator Asselin as reported on December 18, 1974, in which he seems to believe the chicanery about the similarity between alcohol and marihuana?

He says government control and sales would force underworld drug dealers out of business. This has certainly not been true of alcohol in Canada. It was not true with legal heroin clinics in Kansas, California or in the United Kingdom; the illicit traffic thrived. He says government control would or might mean better quality drugs, but what does that mean? Would we sell marihuana of low potency to reduce the psychic, developmental and physical dangers? Surely if we did, the underworld could produce higher potency drugs. Or shall we sell "the good stuff", thereby multiplying the human and financial consequences? We could price it high to recover the money needed for rehabilitation, but then the underworld could grow its own and sell it cheaper. Would this control possession, by prohibiting sales to minors? Our experience with alcohol proves the futility of such a view.

More importantly, and this is relevant not only to legalization but to what I regard as the extreme leniency of Bill S-19, there is consensus among social and medical scientists that the abuse of any drug afflicts more people as a function of its availability. There is a contagion effect.

I agree that strict penalties do not in themselves deter offenders and potential offenders, but this is the flimsiest of excuses to withhold from our public and unmistakable declaration that the non-medical use of psychotropic drugs is a behaviour of which this society does not approve and will not condone. This is not in the usual sense a moral issue, but surely it is immoral in the extreme to do any-

thing at all which encourages or allows a behaviour so destructive of individual societal well-being? Cannabis does belong under the Food and Drugs Act, but is most assuredly does not warrant the excessive leniency proposed by Bill S-19. Nor can I justify forbidding a court to imprison a multiple offence scoff-law for even a day.

We learned the hard way about cancer from uranium salts which were used to paint dishes. We learned the hard way about ordinary cigarettes. For the sake of our country and its young, whose clear-headed energy and intellect we so desperately need, let us not learn the hard way about cannabis. I fear very much this honourable body and Parliament being deluded by a position expressed in that otherwise excellent journal, the *Toronto Star* when it said:

In the absence of clear proof of a general menace to society, the law cannot be expected to save individuals from their own foolishness.

Let the anguished faces of thalidomide victims and their mothers give a non-verbal answer to that. Have we forgotten already? Canada suffered from thalidomide because we said in essence that since no harm had been proven it might as well be sold. The United States escaped that horror because its position was that it must not be sold because harmlessness had not been proven. The ironic kicker to that story, honourable senators, is that the lady in charge of the Food and Drug administration who kept thalidomide out of the United States was an expatriate Canadian who should have stayed home. I do not know what kind of mail is coming, what reaction from voters, but I do know the reactions of the approximately 300,000 with whom I have conversed. I fervently hope this majority will set aside its usual silence and make its wishes known before it is too late.

In conclusion, I respectfully urge this honourable body to question me as closely and as vigorously as it may wish, since this modest service to this body might be somewhat improved if I addressed myself to its specific concerns and questions. Lastly, but by no means the least important point, I repeat my sincere gratitude for the honour that has been accorded me today and my admiration for a Senate so willing to hear an ordinary man. Mr. Chairman, that concludes my formal submission.

Senator Godfrey: One statement which you made rather shook me. On page 7, dealing with section 1, simple possession, summary conviction, you say that a fine of \$500 on first offence with no option of a jail term, is hopelessly inadequate. Why do you say that?

Mr. Panzica: I am sorry sir, there is a word omitted. It should be "a maximum fine" of \$500. According to the Department of Justice people, the reality in this country is that the average penalty in this country is \$100 fine. This applies to more than 72 per cent of the cases. I understand that probation is used in some 18 or 19 per cent of the cases and the rest is accounted for by conditional or absolute discharges.

Senator Godfrey: Why would you think that on the first offence it might be appropriate to fine someone more than \$500, on first offence, for simple possession?

Mr. Panzica: Assuming, sir, that the court had a choice, to go for a couple of days in jail if it felt like it, I think a maximum is nothing more than a declaration of the intent of society. We can potentially give people, under existing law, seven years or something like that, but really the precise number is set as a maximum. I do not think we

really need to limit the courts that much. They are quite free to impose the \$75 or \$100. The difference between simple possession of LSD and simple possession of marihuana is that it is not possible under any circumstances to go to jail, even for a day, on simple possession.

I do not know all the drug offenders in Canada but for the same reasons that I do not like minimum penalties, because they limit the court unduly, I think there should be lots of room in both directions, down and up. To handle an extreme case—

Senator Godfrey: You are still not answering my question. What is the extraordinary specific case where you have a person, on a first offence, with no evidence of previous, that they should be fined more than \$500?

Mr. Panzica: Senator, you have omitted the key words yourself. No evidence of previous what?

Senator Godfrey: First offence.

Mr. Panzica: First offence drugs or first offence in general?

Senator Godfrey: I am talking about first offence for marihuana. Would you cite the kind of a case that you, if you were a judge, would decide it should be a fine of more than \$500?

Mr. Panzica: I am very grateful, sir, but I am not a judge.

Senator Godfrey: I am groping to find out. You made a recommendation. Why should we accept it and for what specific type of instance?

Mr. Panzica: Let me be a little more blunt. I am talking about horse trading, sir, about plea bargaining. This is where the Crown and the defence sit down together and they horse trade and they say: "Look, you cop a plea to this and we are going to forget about that." I know of a fellow in North York who was cultivating an extensive quantity for an extended period, in a position of great trust, and he copped a plea as a result of plea bargaining and there was a deal made, in fact, as to the fine. In a case of this sort of guy, in my opinion, since the judge is either a participant in or aware of the horse trade, I think he should have freedom to go up. In any case, let me evade your question still again and come at it by saying that I do not believe—or let me take it from another view, sir. The danger of the \$500 would not be there if they were saying \$1,000 for LSD. You will recall that elsewhere in the brief my objection is that the bill somehow tells me that marihuana is less dangerous. It is less dramatic in its acute effects at the time of ingestion, but it is assuredly not less dangerous, according to the evidence I have read. But you are right, you are catching me in extraordinarily sloppy wording.

Senator Prowse: As a supplementary question, may I say I had a little difficulty in following you. Where, under the summary conviction, when the Crown proceeds by way of summary conviction and then the \$500 or \$1,000 or whatever it may happen to be, is the maximum fine and the six months is the maximum imprisonment, so that the court can give them both the maximum fine and the maximum six months.

Mr. Panzica: Not under Bill S-19, sir. That is my objection. Bill S-19 is telling our courts that grass is less to be discouraged than LSD, and I cannot accept that view. It is precisely that misconception that is upsetting me.

Senator Godfrey: There is no jail sentence.

The Chairman: Senator Prowse, it is a fine of up to \$500, or imprisonment for up to three months in default.

Mr. Panzica: But only in default.

Senator Prowse: It is getting away from the similarity of the summary conviction that you are concerned about?

Mr. Panzica: Yes, it is just too special a basket to put marihuana in—with respect, sir.

Senator Prowse: In the matter of the plea bargaining one, would you agree from your experience that in reality it is the responsibility of the provincial attorney general who gets it once it gets into the courts. It is his responsibility then to watch for fairness in application by the use of the appeal procedures which are available to him. Is this not so?

Mr. Panzica: Yes, sir, it is, except that you will recall that the Food and Drugs Act and the Narcotic Control Act prosecutions are not prosecuted by the provincial crown attorney. Do not misunderstand me, I am not suggesting for a moment that there is anything wrong with plea bargaining. I do not mean that. I am simply saying that extraordinary circumstances are occurring every day in our courts.

Senator Prowse: One of the strange things about this is that with the Narcotic Act and the Food and Drugs Act prosecutions it is the federally appointed attorney, but their whole authority in the court is as the result of an authority which is extended to them by virtue of the provincial attorney general. For example, the federally appointed crown attorney cannot enter a stay of plea proceedings without the consent of the provincial attorney general.

Mr. Panzica: I was not aware of that, sir.

Senator Prowse: Immediately he gets into the provincial court, he becomes subject to the over-riding control of the other. As a matter of fact, to sign an indictment, in spite of his appointment by the federal department he has to have an authority given to him by the provincial attorney general beforehand.

Mr. Panzica: Thank you, sir, I was not aware of that.

Senator Prowse: This is so. There is an area in here that is a little confusing to people even who work with it.

Mr. Panzica: As I say, I think the primary objection is that I am opposed to any declaration that marihuana is somehow better than or less bad than MDA. Five years ago I was the fellow who said MDA would not kill anyone. It has killed five people since I said that.

Senator Prowse: Would it meet your situation if, instead of setting up this special position for marihuana, marihuana were merely included in the same schedule as LSD, MDA and the others?

Mr. Panzica: If that were the case, sir, I should have had lunch with my wife today instead of being in Ottawa.

Senator Prowse: That is really what you are asking us to do.

Mr. Panzica: Yes. I might add, Mr. Chairman, that the word "shock" was carefully chosen.

Senator Prowse: I appreciate that.

Senator Laird: I must admit, I am still confused with what advice you are trying to give us. On page 2 of your brief you say:

I do not approve of imprisonment for first offenders, especially those under the age of 30.

No one impulsive act, no one reckless hour should ever brand or burden a Canadian for the rest of his life with a criminal record.

Then, on page 10, you say—I am paraphrasing—that you agree in general with the submission of the Canadian Medical Association, but that you think they have made a grave error in judgment when they seek automatic erasure of the criminal record of those found guilty of simple possession. How do you reconcile those two submissions?

Mr. Panzica: Very simply, sir, I do not consider applying for a pardon to be too much work.

Senator Laird: Precisely what mechanics have to be gone through to apply for a pardon?

Mr. Panzica: My understanding is that, depending on the nature of the conviction or the discharge, after one, two or five years one applies to the federal government setting out the circumstances of his conviction, his conduct since then, attaches certain references, I think, from various people in the community, and says "On this basis I think I am entitled to a pardon;" and the government then grants that pardon. Sir, we even make people fill out a form to get unemployment insurance.

Senator Laird: Quite. Of course, naturally, their argument was that this procedure was simply too much for the ordinary person to go through and consequently they would prefer to see a conviction for mere possession, not a matter of record.

Mr. Panzica: I am sorry, I misunderstood their brief. I thought that what they meant was—according to the news release issued by their public relations counsel, the director of communications—I regret that the document is not dated, sir—in the third paragraph, it reads:

We hope the Senate, and/or the House of Commons, will make provision for the automatic erasure of the criminal record for those found guilty of simple possession for personal use after a two or three-year "charge-free" probationary period.

In fact, that already applies to the discharge provisions. Surely it is the nature of the drug abuse cases I have handled, sir, that they do not understand the natural consequences of their own actions. If they get a parking ticket, it is the policeman's fault, as if the policeman parked illegally for them. They wreck up the family car, and daddy buys them a new one. At some point clinically the person must be made aware of the fact that "What I do has some bearing, some remote connection, with what happens to me;" and I think such things as a totally automatic pardon would just defeat all the—

Senator Laird: Let us be specific. What do you suggest should appear in the bill for mere possession?

Mr. Panzica: Exactly what the law now provides for LSD.

Senator Laird: So you are equating LSD and marihuana, as you said before?

Mr. Panzica: Yes, sir, I am.

Senator Laird: There is one other thing. Senator Neiman may wish to take this up. I cannot find any justification for your statement that she said there was a mandatory jail term for mere possession.

Mr. Panzica: When I quoted her, senator, I quoted her exactly. May I have a moment to find the reference.

Senator Laird: On which page of *Hansard* is it? I read it quickly a few moments ago, but I could not find it.

Mr. Panzica: The reference is on page 3 of my brief:

I was surprised to read in the December 5 speech by the Honourable Senator Neiman a statement that we have in Canada "a system of mandatory severe sentences for simple possession."

I identified the source of my information, sir as the Honourable Charles Caccia—

Senator Asselin: Where? Have you the *Hansard*?

Mr. Panzica: No, sir. I am relating what the member of Parliament said.

Senator Laird: I have *Hansard*, and it is not in there.

Mr. Panzica: May I note the issue of a document headed "Excerpts from a speech by Honourable Senator Joan Neiman relative to Bill S-19, the Senate, December 5, 1974."

Senator Laird: But you have to look at *Hansard*. You have to be careful about statements.

Senator Neiman: Mr. Chairman, it is in there. You are quite right, Mr. Panzica. I did not realize that, because you caught me unawares. This was a summary of part of a statement that had been prepared at some point in the Department of Health and Welfare. I changed a good deal of it around before I delivered my speech in the Senate, Mr. Panzica. That was not the statement I made. Unfortunately it did get into that summary, which you have. I had not even read the summary in full. I am sorry.

Mr. Panzica: You have confirmed the correctness of my confidence in the honesty of senators. If my member of Parliament sends me a document reading "Excerpts from a speech," I assume it to be accurate.

Senator Neiman: That was unfortunate. As I say, you had me worried there for a moment.

Mr. Panzica: Would the honourable senator care to see the document?

Senator Neiman: I have a copy of the excerpt that you are looking at. You are quite right. It is in there.

Senator Laird: But it is not in *Hansard*, Mr. Panzica.

Mr. Panzica: If I ever have to return to my former occupation as a journalist, perhaps I could apply for a job.

The Chairman: All you would have to do is read *Senate Hansard*.

Senator Godfrey: Go to the original source in your search.

The Chairman: Are there any further questions?

Senator Neiman: I would be interested in having Mr. Panzica elaborate to some extent on his experience with

the thousands of people he has dealt with, the young people in the drug scene. It is obvious that it is from that experience that he has obtained his convictions that these penalties are wrong in several ways. In some cases they should be a little harsher than they are, and in some respects perhaps a little modified, less severe.

Mr. Panzica: Yes.

Senator Neiman: Would you give us some background on that, Mr. Panzica, as to what is your experience with the young people? Why do you think that at a certain point they must have, say, a jail term? Let us deal with possession. If a person is caught time and time again in the offence of simple possession—and I mean simple possession in the sense of having one or two cigarettes—do you think there cannot be a sort of multiple occurrence of fines only? Do you think at some point you have to put that person in jail to break this?

Mr. Panzica: I think ideally that there should be a rather stringent period of probation, rather strict terms of probation, for two reasons. Firstly, if he is so punishment-seeking and so indiscreet that we are going to catch him 10 or 12 times, then that human being is crying out for help and no one is listening. We have this image, perpetuated by certain broadcast "Personalities", that an 18-year old boy, who is an honour student, who teaches the bible class, who is the pride of his mother and the delight of his father, who never has done anything the least bit wrong in his whole life, wants, at 4 o'clock in the morning, in the basement of an abandoned barn, eight miles outside of town, and nervously touches a marihuana cigarette for the first time, and instantly the police kick the door down and carry him away.

There are, at a guess, ten people in this room who know of their own acquaintance individuals who smoke marihuana on somewhat of a regular basis but who have never been caught by their wives, their employers, the police, or anyone else. When we look at the data and talk about the personality dynamics of the people who are arrested and convicted, or people who are on probation, we are looking at a hopelessly biased sample. We limit ourselves to those who are caught.

Let me reiterate one point: what the law says, in my less than expert opinion, is just about as important as what the law does. This bill, as it is presently drafted, is a declaration to all of us, by arithmetic definition, that LSD is twice as bad as marihuana; that MDA is twice as harmful. I simply do not believe that.

Senator Neiman: I can accept that, but let me cite some examples of my own. In a conversation I had with a person who, for many years, was a probation officer and still works very closely in that field, I was told that the experience in the city in which he worked, which is one of our cities that has a great problem in the drug area, was that well over half the youngsters who are charged with this type of offence are released, most of them not on probation, as you suggest; although some are. He said that one of the problems he found was that half of the young probation officers have also tried marihuana. Whether they use it on a regular basis or not, he did not say, but certainly they tried it, and because of that they do not see the purpose in putting these young offenders on probation. They are of the opinion that they are simply wasting their time. Somebody is wrong somewhere.

Mr. Panzica: You are quite right, senator, somebody is very wrong. I always thought a probation officer was an officer of the court. I never thought an officer of the court could pick and choose his laws. Maybe I am mistaken.

Senator Neiman: I accept that. That is a valid observation.

Mr. Panzica: The probation officer is more than an officer of the court. His function, as I perceive it—and I am not an expert—is to keep the kid out of jail, to keep him out of mental hospitals, to keep him out of an early grave, and to reduce the number of hours per month in which that probationer is unhappy or miserable. The fact that the probationer has chosen to surrender control of his head to a chemical—and whether it is booze, grass, or hash, really does not matter—surely suggests that there is some difficulty, some problem with that individual.

Senator Neiman: Are you saying that everybody who has or will try marihuana, or who smokes it on an occasional basis, has some deep-seated emotional problem?

Mr. Panzica: No, senator, just the majority of those who get caught.

Senator Neiman: Just the ones who get caught?

Mr. Panzica: No, just the majority of those who get caught. Not all.

Senator Neiman: Do you think there is a death wish or a get-caught wish among those individuals?

Senator Godfrey: In other words, do they flaunt it.

The Chairman: Do they want to get caught?

Mr. Panzica: I am talking about hopelessly inadequate self esteem. Do you really need to be a psychologist to come to that conclusion? If I am, by fully documented evidence, jeopardizing—perhaps not damaging, but certainly jeopardizing—mental health, social health, learning ability, genes, chromosomes, respiratory tract, cerebral cortex, if I am taking those kinds of risks with a human being, would you be prepared to argue that I love that human being? Do I dump garbage into the system of someone I really care about? We had a boy who broke and entered a laundromat and left his driver's licence behind. The creativity that goes into getting caught would be one of the few things that would astound this honourable body.

Senator Neiman: But do we not all do that? It is one thing for you to say, "Would I put that garbage into someone's system". I do not think I would.

Mr. Panzica: I did not say someone else; I said someone I love.

Senator Neiman: Whether I love someone or not, I would not knowingly do that. The fact is, however, that people will do that damage to themselves, and they do it not only with this type of drug, but with other kinds of drugs, some of which are freely available across the counter. People will do it. I think part of the problem is that they really do not know, in medical terms, the extent of the damage they are doing to themselves, whether from the taking of tranquilizers, or other drugs.

Mr. Panzica: Senator, I do not think we would be having these deliberations if the amount of energy, the amount of study one puts into buying a longplaying record, went into

the decision-making process about marihuana. It takes the average young person about 25 minutes to choose his or her LP. If they were to spend 25 minutes in a reference library, you would not need me. I would be a journalist today.

Senator Neiman: One further question. You made a statement to the effect that you did not know one person who smoked marihuana who did not also drink alcohol.

Mr. Panzica: I am limited to my experience, senator. Every grasshead I know drinks.

Senator Neiman: I will give you another example. I had a long talk with somebody last night who does not drink but who does smoke marihuana occasionally. As a matter of fact, that person cited an example of playing bridge where one of the group of four people regularly smokes pot but does not drink.

Mr. Panzica: It is true that I am a victim of my own limited experience. In my experience, I have never met such a person. I would not be so silly as to suggest that such a person does not exist.

Senator Neiman: The experience of the person with whom I was talking was that pot smoking inevitably starts after a few drinks have gone around.

Mr. Panzica: That has been my experience.

Senator Asselin: On page 11 of your brief, Mr. Panzica, you made reference to a statement by me that government control and sales would force the underworld drug dealers out of the business. In that respect, you say: "This has certainly not been true of alcohol in Canada." I have been a lawyer for 21 years, during which I practised as a prosecutor for the Crown. At this time I am a defence lawyer. On what do you base your statement that this has not been the case in Canada?

Mr. Panzica: It is extremely simple minded, senator. We have bootleggers in Toronto.

Senator Asselin: Do you speak only for Toronto, or for all of Canada?

Mr. Panzica: I am not familiar with Canada as a whole.

Senator Croll: I think you are talking about entirely different things. As I understand Mr. Panzica, when you talk of "bootleggers" you are referring to the people who might sell you liquor or beer at three or four o'clock in the morning when the government outlets are closed.

Senator Asselin: But that is not the same thing. Do you admit that since government controls were applied to the sale of alcohol there has been less illegitimate trafficking?

Mr. Panzica: Oh, yes, of that there is no question, in alcohol.

Senator Asselin: Could you make the same remark regarding the control of the sale of marihuana?

Mr. Panzica: No, sir; logically, in the mind of any intelligent and educated layman, yes, it should work. Unhappily in the real world it has not worked. May I offer one more sentence with respect to alcohol? Syndicated crime in the United States never had such a field day as when alcohol was legal in Canada and illegal in the United States.

Senator Asselin: That was a long time ago, in the days of prohibition.

Mr. Panzica: Yes, sir. If I were in charge of business development and promotion for syndicated crime, my first duty would be to press for legalization in Canada. This would not be for the reasons that an honourable, interested and concerned man, such as you, has, sir. As I said within my brief, I know you to be a man of integrity and intellect both. Even the Liberals say you were a great member of Parliament. I have heard that twice this morning. That is true, sir, it really is, but I am saying that while you and I might desire a certain act for proper and just reasons, there are elements in the United States who might desire the same thing for vastly different reasons to yours or mine.

Senator Prowse: They want it in Canada.

Mr. Panzica: Yes, they want us to legalize it.

Senator Asselin: They want to make it legal for youngsters to buy marihuana, but if the government controlled the sale there could be a law against selling marihuana to youngsters, such as that we have in connection with alcohol.

Mr. Panzica: But the same law with alcohol does not work with the 15 and 16-year olds where I come from.

Senator Asselin: But it works in Quebec with 95 per cent.

Mr. Panzica: My distinguished wife would certainly agree with you, that anything in Quebec is superior to anything in Toronto, she coming from Rouyn.

Senator Asselin: I say in Quebec and your wife is or was from Quebec.

Senator Langlois: She is an intelligent lady.

Mr. Panzica: I admire her choice in men, sir. We certainly have 15 and 16-year old alcoholics in Ontario.

Senator McDonald: They also have them in Quebec, I can assure you.

Mr. Panzica: Yes. If I am turning red, it is because I was one of those who favoured the lowering of the age to 18.

Senator Godfrey: But the fact remains that when the liquor stores were kept open until 10 o'clock rather than 6 o'clock, it practically abolished all the bootleggers in Toronto.

Mr. Panzica: I would expect so, sir.

Senator Godfrey: It really did, so when preparing your next brief, if I were you I would not include that statement.

Mr. Panzica: What it does for illegal importation is a somewhat different story, though.

The Chairman: You said you want marihuana classed with LSD?

Mr. Panzica: In the main, I do sir.

The Chairman: Is LSD a more dangerous drug?

Mr. Panzica: For an answer to that you would have to ask a consortium of biochemists, physicians and psychiatrists.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: But in your experience?

Mr. Panzica: From my own experience and my own reading, I think marihuana is now what thalidomide was in 1962. In terms of the acute effects, certainly LSD, MDA and STP and all the rest of the stuff are more dramatic. These are called psychotomimetic drugs. Very simply this means that LSD and its alphabet soup companions imitate psychosis. The person is temporarily psychotic, which may be pleasant, unpleasant or something in between. However, in terms of long lasting effect, for instance such as genetic and chromosome damage, there is slightly more evidence that marihuana has these effects than there is with respect to LSD. There is very good evidence of long-term and possible terminal impairment of learning ability due to chronic marihuana use. I have seen no such evidence with respect to LSD.

On the other hand, one of the dangers of marihuana that those of us who are too close to the scene tend to forget is that it is so marvellously seductive. The person does not temporarily go crazy. He does not vomit nor does he suffer a hangover and is convinced, therefore, that he can handle getting stoned, and it is the nature of human nature to modify our pleasures. Somewhere in history was the first man who put a hunk of cheese on a hamburger. So, if I accept the notion that getting stoned on grass is a good thing, then maybe getting stoned on MDA is a better thing. In terms of total risk, sir, the evidence is not there yet.

Senator Croll: May I ask the witness one question, which he does not have to answer: Have you ever tried these?

Mr. Panzica: I would be delighted to answer, sir, if the honourable senator would consent to suggesting the reason for his question?

Senator Croll: The reason for the question is very obvious. You speak with such authority with respect to all these things that I wonder what practical knowledge you have?

Mr. Panzica: May I say, sir, that I am delighted we are not here testifying in the matter of my clinical work with lesbians, because I would be in a very difficult position.

Senator Croll: You did not indicate that you had such experience, or I might have asked you.

Mr. Panzica: Touché, sir.

Senator Croll: But I ask you the question and you do not have to answer it.

Mr. Panzica: The answer would be irrelevant, because getting it from the horse's mouth does not mean asking the horse. It means clearheaded examination of the horse. However, the short answer is yes, more than—my God, 24 years ago; another century, another country.

Senator Croll: I am prepared to listen with more credibility now that I feel that you know more about it in a practical sense.

Mr. Panzica: With the greatest of respect, sir, and that is not just a polite phrase, I honestly mean it; with great respect, sir, I would have hoped that careful study and direct clinical experience would have meant more.

Senator Croll: A great number of witnesses have appeared before us with a great deal of knowledge regarding this subject. They have read about it and so on, but

when we arrive at that point we find six others who do not agree.

Mr. Panzica: Yes, sir.

Senator Croll: What are we supposed to do?

Mr. Panzica: I do not envy you your task, sir.

Senator Croll: No, do not worry about it; we will carry it out all right.

Senator Neiman: May I ask Mr. Panzica in the light of all his experience again, does he feel that there is any correlation between certain types of drugs leading on to the hard drugs? Is this a fear?

Mr. Panzica: I am intimidated to answer a question as to whether the use of one drug might encourage and promote the use of another, because I have lived in fear for approximately 10 years of what the press would do to my answer to such a question. I must rely on an earlier answer, madam, that once the notion is accepted that getting stoned is acceptable or a good thing, it is a very small step to decide that some other stoning is equally all right, or perhaps better. There is some evidence in connection with the chronic use of marihuana, say five or six times a month.

Senator Neiman: You regard that as chronic; is this a definition?

Mr. Panzica: Let me say regular; chronic is a medical term and I am not a physician. There is some evidence in the Addiction Research Foundation of Ontario of approximately five years ago, possibly six, that a person who gets stoned on marihuana five or six times a month is approximately 62 more times likely to use LSD than is a person who gets stoned on alcohol five or six times a month. He is approximately 13 times more likely to use amphetamines and speed, maybe not intravenously, but to use them. However, the data are skimpy. I do not recall ever meeting a single drug user, with one exception, which is in the case of the old-time criminal junkies, that used only heroin and never touched marihuana in their whole lives and never heard of LSD.

Senator Neiman: Have you met many who have used just nothing but marihuana?

Mr. Panzica: No, madam, I have not. I have met many who said, "I use nothing but marihuana or hashish"—and then in the course of assessment, which is four or five interviews, when they are asked "Well, have you ever tried LSD"? They say "Well, a couple of times but I had a bummer and that put me off it." When he is asked "What about MDA"? he replies "Oh, yes, sometimes, when you're having sex it helps." And when he is asked "What about STP"? he answers "Well, once." And when he is asked then about this drug or that drug, he says "Well, a couple of times, I just played with it now and again." Pretty soon you have a list of 11 or 12 drugs which have been used during the preceding two months and still he sits there and says he has used only one drug.

There is one thing that I can say with certainty and it is that the chronic or regular use of marihuana would certainly tend in the 380 or 390 number of people I worked with, it certainly makes them a lot less afraid about LSD, STP, MDA, speed and the rest of it. But I am not prepared to say that the chronic user of drugs is going to go to other drugs.

Senator Prowse: Do I understand, then, that you are recommending to us that if we put marihuana in the special category that is provided by these amendments, it means we are saying to people that it is safer to use this than it is to use the other drugs that are in the Food and Drugs Act, such as LSD and the ones you suggested—by implication?

Mr. Panzica: That is the inference I am drawing sir, and that many of the people around me draw also.

Senator Prowse: Very well. Now, another question. You are satisfied from your experience, both with the people and with the courts, that if we put this into the same category as LSD, with possibly some provision for a cultivation which I think is a little different there, that it will leave the courts with all the range of alternative necessary, if they use their heads, to treat this as it properly should be treated, so that the least possible social or individual damage will be done by the court process?

Mr. Panzica: Yes, sir, exactly so. Indeed, the highest praise which I can give my courts, the courts in which I have testified, is that they have given me the intelligent, sensitive, concentrated and concerned interest and attention, that this honourable body has, and that is saying a great deal. Thank you very much, honourable senators.

The Chairman: Thank you very much, Mr. Panzica.

Honourable senators, the next group which we will hear on this subject is ready now. Mr. Stevenson is a member of the National Parole Board. He will introduce his associates. They have not prepared any memorandum but are prepared to answer questions such as have already arisen here—for example, with respect to criminal records and so on.

Mr. Kyle Stevenson, Member of the National Parole Board: Mr. Chairman and honourable senators, it is a great honour to be here and I offer apologies of Mr. Outerbridge, our chairman, who had an earlier engagement in Montreal and could not make it today. He has asked me to fill in for him and extends his regrets. I brought along Mr. G. Depratto who is a Director of Policy Planning and Evaluation for the Board and who was formerly Chief of the Clemency and Criminal Records Division of the Board; Mr. P. L. Dupuis, who is now the Acting Chief of that Division. I understand that you have some questions with respect to the Criminal Records Act and how pardons are granted—I heard one question earlier. We have an application form here, if anyone would like to look at it, even fill it in, perhaps.

Senator Croll: As a matter of fact, you have got a couple of my clients here. Can you explain to us the routine for an application for pardon? You could start at the beginning.

Senator Godfrey: Someone has said there was a conflict between the Criminal Code and the Criminal Record.

Senator Croll: Hold on, now.

Mr. G. Depratto, Director of Policy Planning and Evaluation, National Parole Board: Honourable senators, first of all, the person who wants to apply for a pardon has to address his request to the Solicitor General. We ask him to complete this form here, which is the formal application for pardon. When it is received by the minister, he refers it to the Clemency Division. There we first look at the application to see if the person is eligible or not.

Senator Croll: What makes him eligible?

Mr. Depratto: Let us say that first of all a person could apply at a given time, but no inquiry shall be initiated before two or five years have elapsed, or one and three years. It is two years if a person was convicted for a summary offence under Part XXIV of the Criminal Code and it is five years in other cases, where it is an indictable offence. This is the general rule. In cases of absolute and conditional discharge, the delay is one and three years instead of two and five years. Those are the waiting periods. We cannot start an inquiry before then.

If a person is eligible and has provided us with the certificate of conviction, then we initiate the usual inquiry. We cannot conduct an inquiry and recommend that a pardon be granted to a person who cannot prove that he has been convicted. In some cases we receive an application and we cannot find any certificate or conviction.

Senator Croll: But you have a record of the conviction anyway. He gets it from you, does he not? If he wants a record of his conviction, can he not apply and get it through you?

Senator Godfrey: No.

Mr. Depratto: You can get a record of your conviction either by applying to the court or to the R.C.M.P. Sometimes the records of the court might have been destroyed because of a fire, or some courts are destroying their records after a while and it is not possible to find them.

Senator Croll: The man has been convicted and the three or five years are up. What happens now?

Mr. Depratto: After we have received the application?

Senator Croll: Yes. What do you do?

Mr. Depratto: Then we ask the police force who have inquired into the case—let us say it is only one offence—for a report of the circumstances surrounding the commission of the offence. We also ask the RCMP and FPS, and once we have received the information about how the offence occurred, and information from the FPS, we refer the case to the RCMP and ask the RCMP to conduct a thorough investigation. At first they visit the applicant himself and explain to him how they will conduct their investigation. If they have any objection to a question asked on the application form, they inquire about that. The RCMP visit the applicant and the references given on the application form. They also contact the local police force where the applicant is living. That is about all the investigation that is conducted by the RCMP. They follow up the applicant's references, sometimes they visit neighbours and contact other police forces, sometimes they do what we call an indices check—they check on their indices to see whether the person is suspected of being with organized crime, of having committed an offence, having been involved in some criminal activities.

Senator Croll: From the time that we started out on the application and you turned it over to the RCMP, what is the normal time that the RCMP take?

Mr. Depratto: It usually takes about three months.

Senator Croll: I never had one take less than two years.

Mr. Depratto: The time for the investigation itself?

Senator Croll: From the time you turned it over to the RCMP. In my experience it has never been less than two years.

Mr. Depratto: If you are talking about the final decision, it takes about 12 months.

Senator Godfrey: Please listen to his question.

Senator Croll: From the time that the RCMP receive the application—assuming it is going to be granted and you do grant it—I suggest it takes a minimum, normally, of two years. What do you say?

Mr. Depratto: It usually takes, from the date an application is received to the day that the final decision is reached, about 12 months.

Senator Croll: You say it takes about a year?

Mr. Stevenson: If I may verify that, I have the final report come across my desk for signing. I very often turn back to the date of the application, and there have been cases where it is 18 months to two years, because, perhaps, of additional investigation. But recently I have been pleased to note that almost all of them are less than a year old. It should be shorter, but—

Senator Croll: We are not so much concerned with the shortness of the time, so long as it goes through the routine properly. Our discussion is about the youngster who has a record. Have you ever taken a look at the number of people who are convicted and the number who ask for pardons—the percentage, one to the other?

Mr. Depratto: I was told by an RCMP investigator—I do not know from where he got his statistics—that there are over 100,000 people who could ask for a pardon at this time, who are eligible.

Senator Croll: But who have not?

Mr. Depratto: Who have not, yes.

Mr. Stevenson: Are you relating to possessional offences for drugs?

Senator Croll: I am relating to the number of people. Is it 15 per cent, 12 per cent—how many?

Mr. Stevenson: I have no idea. We have had about 8,000 applications. Last year alone in Canada there were something like 34,000 convictions for possessional drug offences.

Senator Croll: If you had eight against 34—

Mr. Stevenson: A very infinitesimal number have applied.

Senator Croll: That is the point. An infinitesimal number have applied. In those circumstances, the thought is, "Don't write me, I will write you." The thought is that the year is up, you have made a bit of investigation, the fellow is clean, he is going about his business, he does not want to admit to anyone that he has been in this, he does not want to admit to friends, and so on, and a notice is sent to him saying that the conviction has been taken off the record. The initiative is coming from you rather than from him.

Mr. Stevenson: We would have to hear from him to know about his conviction. We would have to have an application. We would have to investigate.

Senator Croll: Could not the conviction automatically come to you from the RCMP, who would have it?

Mr. Stevenson: It would be very difficult. We would need hundreds more staff. There are thousands of convictions every year.

Senator Croll: Then what could we do, Mr. Stevenson, for those people who are frightened to do it, do not know that it is available, do not want anyone to know about it, and yet do themselves an immeasurable amount of harm? What can we do for them? What would you suggest?

Mr. Stevenson: We should perhaps publicize the existence of the Criminal Records Act more than we have done, and we should certainly speed up the process. Perhaps in the amendments that are forthcoming there may be a provision to speed up the whole process, to make some of it perhaps automatic.

Senator Croll: You say "Make some of it perhaps automatic." What do you mean by that?

Mr. Stevenson: I do not want to go too far because the amendments to the bill are still before Cabinet.

Senator Croll: We are here to do a serious business. The matter concerns us very much because of the harm that is done to these young people in later years. A person never knows when he is going to be asked the question. These young people take no notice of these things that happen. Later on, when a young man is working in a bank and someone says "You have to be bonded," he is working in a company, he has to be bonded, he goes across to the United States and someone picks up a record, or he makes an application somewhere, and they say, "Well, you did not tell us the truth when you told us you were not convicted." He had forgotten about the thing. Those are the people we are trying to help, even though they do not help themselves. Tell us how it is possible to do it? He has paid the penalty. He is merely carrying a mark. How can we help him out so that he does not carry the mark of pot for the rest of his life?

Mr. Stevenson: Once he has that mark, there is a remedy open, but it is a slow remedy at the moment. It is not well publicized. So I would say, encourage him to apply and we will speed up our process.

Senator Croll: I have absolute confidence in what you are doing. Your work stands in high regard. You suggested that in some instances there might be an automatic way of doing it, so that it comes normally. We are very much interested in that.

Senator Asselin: We have to amend the law.

Senator Croll: I know we would have to amend the law. You suggested, Mr. Stevenson, that if we amended the law it would take an army of people to look after it. Did you not say that to me?

Mr. Stevenson: No. If it became automatic for everyone—for us to receive the criminal record and begin an investigation into everyone who is convicted three or five years ago, that would be a tremendous job. I do not think it would be possible.

Senator Croll: That is what I thought you said. If you had to do it with respect to an age limit, would that make it easier?

Mr. Stevenson: Perhaps in certain areas it might be possible. We have experimented up until now in certain areas to do away with the police investigation. It would eliminate three to five months, perhaps. It is a decision, guesswork, a judgment, which has to be made. As long as we check into the police indices that there are no further convictions, and that he is eligible, then the investigation could be shortened a great deal.

[Translation]

Senator Asselin: Let me sum up for you the pardon request. I have some experience in that field, since I have done it for a few clients. The applicant must fill a request form. He must list reference names, furthermore, if I recall correctly, he must mention names of people who are not aware of his record.

Mr. Depratto: Not necessarily.

Senator Asselin: Am I correct or not?

Mr. Depratto: No, it can be someone who is aware or unaware of his record.

Senator Asselin: If my understanding is correct, the forms I had to fill for clients mentioned that reference should be given of people who were not aware of the applicant's criminal record. Do you have any of these forms?

Mr. Depratto: Yes.

Senator Asselin: Read the form, you will see.

Mr. Depratto: Do you see here it says:

"Name at least five persons from whom an investigator can confidentially ask references. Do not mention parents, employers or employees. And, indicate with an asterisk if the warrantor knows about your conviction or not".

Therefore, we limit the people who can be named as a reference, but they are not limited in the sense that the person must know or not about the criminal record.

Senator Asselin: That form, that procedure, as far as I am concerned, causes greater prejudice to the applicant and here is why. I am not talking about a city like Montreal or Quebec, where people know each other more or less. I am talking about a city with a population of 4,000 or 5,000 people where everybody knows everybody. I am speaking from experience, since I am presently dealing with a practical case for a client. We have referred the form to the RCMP. The officer goes into the community to see people and question them about the applicant. Often, the people are not aware that a young man has committed an offence five, six or seven years ago. Then, as soon as the officer has questioned one person, the whole town knows about it. It happened in a particular case where I had a client who had committed a very minor offence six years prior to my investigation. He had shoplifted a pack of cigarettes. That is the only crime he had ever committed and he was very easily readapted. He became the owner of a hotel and requested a permit to operate his business. He was refused the permit on account of his criminal record. He came to see me and we had to submit the application on behalf of his father who was 65 years old, since the young man had bought a hotel and needed a permit to operate it. He was turned down because of a criminal record already ten years old. That is the provincial police. Afterwards, an investiga-

tion was conducted. They went to see the people he had listed on his application. Now, I think the whole population knows that my client, ten years ago, committed a criminal act, that he shoplifted a few packs of cigarettes. What I would like to ask is whether there are possibilities, in places where it can be done, that the RCMP limit its investigation to the Mayor of the city who can keep a professional secret, and to the Chief of Police. The latter can easily consult the records, he is aware of the case, he knows the families, he knows the population. The RCMP could certainly limit its investigation by questioning only these two people, instead of consulting people who, most of the time, are not aware that the person had a criminal record, but the moment the investigator asks references about him, in a small town like ours, where there are 5,000 or 6,000 people, well, two days later, everyone knows about it. Would it be possible to proceed otherwise?

Mr. Depratto: First of all, it is evident that on account of these investigations, the individual's criminal record is thereby revealed. But on a practical level, I must say that there were approximately 4,000 pardons granted, and as many investigations conducted. We received about five complaints from individuals who were saying that those inquiries were not discreetly made.

Senator Asselin: I am not saying that the RCMP is not conducting its investigations discreetly, that is not my point of view. In my opinion, in those communities where everybody knows one another, we should limit the investigation to two people, the Chief of Police or the Mayor of the community who must keep professional secrets.

Mr. Depratto: It has been done elsewhere. However, if we read the act, it requires the Commission to conduct the necessary investigation in order to establish the good behaviour of the individual. In some cases, where people have told us: "Well, I am interested to get pardon. My offence was committed about 20 years ago and I live in a small community, and people could easily learn that I was convicted because of the investigation that will have to be conducted."

In such cases, the investigation was limited to a verification of evidence with the RCMP and also with reference letters from important people in that community who will keep the secret, and a verification with the police force in the area, in order not to extend the investigation to people who are not aware of the record and who would have been included in the investigation. We have therefore avoided to spread the rumour, if you wish, about the criminal record of the individual. But that is done only in cases where we are advised of the situation. When we get an application, it is not always specified that the applicant fears other people will learn about it and, in that case, we follow the normal process.

Senator Asselin: As far as the bill under study is concerned, I think that several of my colleagues, as myself, have reservations concerning criminal records of youths who have been found in temporary possession of marihuana or cannabis. Would you be in favour of an amnesty by the Governor in Council for youths who have a record following temporary possession of marihuana? Or should we study each case in particular? In fact, the Governor in Council could easily say that those who have been convicted for temporary possession of marihuana and cannabis would have their record automatically destroyed. Would you be in favour of such a measure?

Mr. Depratto: I do not know, well . . .

Senator Asselin: An amnesty, in fact.

[Text]

Mr. Stevenson: Automatically grant a pardon if he was convicted two years ago, say, for a marihuana offence?

Senator Asselin: You can make it a period of one year or two years, or whatever. My point is that the person with a criminal record should not have to make an application for a pardon. Such a process could take years. You have many dossiers to study. I think it would be a good thing to have an automatic pardon after a certain period of time for those people who have been convicted of minor offences involving marihuana. Would you favour such a measure?

Mr. Stevenson: No.

Senator Asselin: Why not?

Mr. Stevenson: For one thing, the thousands that would be given out would lessen the importance of it. If we started granting automatic pardons, that person might, within a year, have moved on to more dangerous drugs, such as heroin, and so forth, and perhaps even be leading a criminal life. Therefore I would not favour the automatic granting of it until some investigation were carried out. It could, perhaps, be a shorter investigation. Certainly when I see a shoplifting offence or one of possession of marihuana I do not pay nearly as much attention to it as I do to a break and entry or a more serious offence.

Senator Asselin: Are you in favour of a youngster who has been convicted for temporary possession of marihuana incurring a criminal record?

Mr. Stevenson: No; I am in favour—

Senator Asselin: What can be done to avoid that?

Mr. Stevenson: I am not in favour of a possession offence for marihuana, personally. Therefore he would not have a criminal record.

Senator Langlois: Mr. Chairman, I would like again to draw the attention of the witnesses to the recommendation put forward by the CMA, which was twofold. First they expressed the pious wish that the Senate and the House of Commons will propose an amendment to the present legislation in order to avoid the imposition of a court record in case of conviction for simple possession. Failing this they proposed that after a probation period of two or three years there would be an automatic cancellation of such a record if one were created. This is the essence of the recommendation.

I am now asking the same question as was asked of you by Senator Asselin: Would you be in favour of such a recommendation and, if so, would this be possible to work out, having in mind your own pardon procedure? In my mind there is quite a difference between this recommendation and a pardon.

Mr. Stevenson: Yes; we would retain the possession offence. As long as there is a conviction it will go on the record unless an absolute discharge is granted.

Senator Langlois: But if the present bill were so amended as to avoid the creation of such a record, there would be no record?

Mr. Stevenson: Yes, I would favour that.

Senator Langlois: I have another question supplementary to that of Senator Asselin. Reference was made to these references which you ask an applicant for a pardon to submit to your division. What happens if the applicant submits no reference?

Mr. Depratto: This has happened to my knowledge three or four times in all. In such cases we contact the applicant himself, either by telephone or by letter and endeavour to explain our procedure to him and convince him that his criminal record will not be disclosed to anyone. We attempt to adopt a method satisfactory to him which would permit us to process his case. Personally I have not seen any cases which we did not process because the applicant did not wish to give us references. We found another way of conducting our investigation to the satisfaction of the applicant himself. When they do not wish to give the names of their friends, it is mainly because they are afraid others will be made aware of their record. As I remarked to Senator Asselin, there are cases in which a verification of the indices and a contact with the local police force is sufficient in addition to letters from well-known people in the area in which the applicant lives.

Senator Langlois: You are seeking character references?

Mr. Depratto: Yes.

Senator Langlois: Could you not obtain those from the local police, the R.C.M.P., the court officials, the mayor of the municipality or the sentencing judge?

Mr. Depratto: It always depends upon where the applicant lives. In such cities as Montreal the police force does not know all the applicants very well. They could inform us as to whether they have anything against them, but they could not say if they are resuming criminal activities or are involved in crime continuously. It is only through investigation that we can verify this and that is why we cannot do it in all cases.

Senator Langlois: Do you never inquire of the sentencing judge?

The Chairman: He may be dead.

Senator Langlois: If he is alive, of course.

Senator Croll: I have a question supplementary to that. A man commits an offence, is convicted and later pardoned. He applies for a job and is asked if he has ever been convicted of a criminal offence and answers no. Is that a truthful answer?

Mr. Stevenson: No.

Senator Croll: Then we are in trouble at that stage. Does he say yes, but he was pardoned?

Mr. Stevenson: Yes, which, hopefully will hold some weight with the employer.

Senator Croll: But he then lays himself open.

Mr. Stevenson: Yes; that is true, he opens himself to other questions.

Senator Langlois: It does not change the man.

Mr. Stevenson: Yes.

Senator Croll: Has that not occurred many times?

Mr. Depratto: First of all, I must say that presently the interpretation placed on the act is such that the person has to say yes if he is asked has he ever been convicted. He says yes, but indicates that he was granted a pardon. Of course, if an employer knows that the person has been convicted, even if he has been pardoned, he does not care and will not hire him, because of that. On the other hand, even if we were to amend the act and provide that the person can deny that he was ever convicted after being granted a pardon, I suppose employers and others would ask him had he ever been granted a pardon and there would be no end to it. In my opinion we must educate the public and prove to them that the pardon is of value because of the inquiries which are conducted before it is granted.

Senator Croll: When you say they will be asked have they ever been granted a pardon, that is quite possible, but at least when that question is asked it is known that a clear record exists. On the other hand, in the ordinary course of events is the record expunged, or is a cross simply put beside it?

Mr. Stevenson: Only those records under federal government control, the R.C.M.P. and so on, are expunged, but the local city police are not bound by our decision on a pardon. Credit companies and others can have access.

Senator Croll: They cannot get that information.

Mr. Stevenson: They do, of course.

Senator Croll: Let us assume that you have expunged the record; do you throw it away? You do keep some record?

Mr. Stevenson: Yes, I believe it is sealed.

Mr. Depratto: Yes; the record is sealed off.

Senator Croll: Do you suggest that when you have expunged a record, it is possible for someone to obtain similar information from the local police?

Mr. Stevenson: Yes. At the time of the conviction, of course and, perhaps, subsequently, it appears in many, many offices throughout the country. The R.C.M.P. would receive a notification to seal it off and perhaps even the local city police would, but they are not obliged to do so, because they do not fall under the force of the Criminal Records Act. The Solicitor General has been meeting with representatives of the provinces in an attempt to persuade them to include provisions in their legislation putting this into force and providing for a penalty if such information is divulged at all. I believe he has been getting some co-operation.

Senator Croll: Is it not an offence now?

Mr. Depratto: It is.

Mr. Stevenson: It is under the Criminal Records Act.

Senator Croll: But is it not an offence now for anyone to divulge current information of that nature? I think it is under the law.

Mr. Stevenson: It may be an offence under provincial legislation.

Senator Croll: Does one of the other witnesses know?

Mr. Gérard Doucet, Legal Adviser, Department of the Solicitor General: Under the legislation the ban on disclo-

sure of criminal records applies only to federal agencies and departments. It does not apply to those in provincial departments and so on. Therefore if someone were to call or write to a federal agency and ask for particulars of a criminal record of a person who had been granted a pardon the answer would be that we have no record. However, in the case of an application for employment purposes, protection is also provided under the Criminal Records Act, but only for federal employment. No questions whatsoever are contained in the Public Service Commission application for employment as to criminal records. After being granted a pardon the person has no criminal record and inquiries as to it would receive the same answer. Therefore there is no discrimination, but this applies only on the federal level. On the provincial level the act would not apply. So the problem you raise is really on the provincial side.

Senator Langlois: What is the purpose of keeping the record after the record has been expunged? If we have pardoned this man, he has been pardoned for good.

Some Hon. Senators: No, no.

Senator Langlois: Then "pardon" is a misnomer.

Mr. Doucet: I agree with you.

An Hon. Senator: Would you also state your name and position?

Mr. Doucet: My name is Gérard Doucet and I am legal advisor with the department and I am involved in the drafting of the new legislation. The concept of pardon, I agree with you, should be a concept that it is forever. But in regard to the provision for revocation, there are some grounds for revocation, there may be subsequent offences and naturally if a person has lied when making an application, there is that information. The pardon is recognized as evidence that the person has a good conduct. That is the legal effect, contained in section 5 of the criminal records. The possible ground for revocation of pardon is if a person is no longer of good behaviour.

Senator Langlois: So you are bad confessors.

Mr. Doucet: I think this was put in as a provision in the Criminal Records Act to reassure possible employers that the pardon has a value. If the person does not continue to be of good behaviour, we can revoke it and a person will not obtain the effect of the pardon. I think that is the basis behind this. I have studied the comments and the presentations made before the committee on this, and I did not see any reluctance to grant a revocation, so I am not able to answer why it came through. But I just guessed that that was the reason.

Senator Langlois: We had before us the members of the Narcotic Branch of the R.C.M.P. and when they were asked a similar question to the one I put a while ago, as to whether they would be agreeable to the Senate and House of Commons amending the present legislation so as to prevent the establishment of a record in the case of a conviction for simple possession of marihuana, they said "no, we are opposed to it, because this would prevent a proper prosecution of a second offence". But if the record is always there, I think the answer is not valid, the opposition is not valid then.

Mr. Doucet: The only aspect I see in regard to the pardon, or too many pardons, in regard to the possession of marihuana, is when the judge is able to take into account

the first conviction that has been pardoned, or to increase the penalty, or things like that. That is the effect that the pardon has right now, so I assume that the R.C.M.P. were referring to that portion.

Senator Langlois: If the judge can take into consideration, in sentencing, an offence which has been pardoned, your pardon is not very good, it is not worth the paper it is written on.

Mr. Doucet: If there has been a pardon, the judge is able to take that into consideration, in the sentence on persons.

Senator Langlois: The judge still has it in the back of his mind, if that information is available to him.

[Translation]

Senator Asselin: A supplementary. As legal advisor, you are a legal advisor, aren't you?

Mr. Doucet: Yes.

Senator Asselin: If the judge simply says, "I issue an unconditional sentence," like it sometimes happens. What I would like to know is if in your judgment, this sentence results in the establishment of a criminal record. This occurred in a case that was brought to my attention.

Mr. Doucet: I think that this gentleman has dealt with that at the beginning.

Senator Asselin: I don't understand.

The Chairman: Would you please speak a little louder, Mr. Doucet?

Mr. Doucet: The honourable senator, the first one in front of me, has referred to this discrepancy existing right now between the Criminal Code and the Criminal Records Act concerning the unconditional or conditional sentences. The Criminal Code says that a person who receives an unconditional sentence, or, well, it is called a conditional or unconditional liberation, this is the formulation used in the Code—the person is considered as not having been convicted, there was no conviction. Now, in light of the Criminal Records Act, this person supposedly has a criminal record. This is somewhat the inconsistency which prevails between the Criminal Code and the Criminal Records Act. Now, this provision was implemented together with the amendment to the Criminal Code, and we have had to live with that without being very satisfied of it.

Senator Asselin: In the review of this new Act, will there be any changes?

Mr. Doucet: Yes.

Senator Langlois: When you dealt with the possibility of a revocation, does this occur frequently, the revocation of a pardon, I mean?

Mr. Dupuis: We have had seven cases, I think, and these were cases where people had been convicted for other offences before.

Senator Langlois: Have you had any cases where you discovered that false declarations had been made?

Mr. Dupuis: This has never occurred up to now. Now, some people were refused pardons because it had been discovered that they had not told the truth while making their declarations.

Senator Langlois: What is the percentage of refusals, approximately, on requests of pardon?

Mr. Dupuis: Refusals on the whole?

Senator Langlois: Yes, on the whole.

Mr. Dupuis: I could not tell you the exact percentage, but there are out of the 8,300 cases studied up to now, some 275 cases where pardon was refused.

[Text]

Senator Prowse: With regard to the revocation of the pardon, does this happen automatically or does the person have to make an application to the court to revoke?

Mr. Depratto: Revocation is done in this way. We are made aware by the R.C.M.P. usually that the person has been convicted again.

Senator Prowse: So you look at the sealed files?

Mr. Depratto: We request the authorization, of course, of the minister when we want to investigate in a case where a conviction has been pardoned.

Senator Prowse: How do you know, if it is sealed?

Mr. Depratto: How do we know?

Senator Prowse: If these records have been sealed, which is what happens when he is pardoned, and then the person is subsequently reconvicted of a similar or other offence, how do you know that there is a sealed file—if it has been expunged or sealed?

Mr. Depratto: First, I would like to read section 6 of the Criminal Records Act, which says:

Any record of conviction in respect of which a pardon has been granted that is in the custody of the Commissioner or of any department or agency of the Government of Canada shall be kept separate and apart from criminal records, and no such record shall be disclosed to any person, nor shall the existence of the record or the fact of the conviction be disclosed to any person, without prior approval of the Minister—

So when we are dealing with a case where the R.C.M.P., for example, learns that someone has been convicted, we say the R.C.M.P. has the right to verify in their own records, which are sealed, because they are not making aware any one of the records which are sealed, they already know about the record.

Senator Prowse: If there is a sealed record.

Mr. Doucet: If we have to conduct an investigation with people who are not aware of the record, then we ask the minister for authorization, for the better administration of justice, we open the case—

Senator Langlois: In other words you forgive but you do not forget?

The Chairman: You said in effect that there is a record of sealed records?

Mr. Doucet: Yes.

Senator Prowse: That is good enough for me.

The Chairman: Senator Godfrey, has your question been answered?

Senator Godfrey: I want to bring up a point when the witnesses have finished.

Senator Laird: I should like to get from some of the witnesses some specific information based on their experience. For example, if, in the course of applying for employment, the question is asked "Do you have a criminal record", and the applicant for the job answers "No", I would take it that this would be in accordance with the facts if a pardon existed. Is that right?

Mr. Stevenson: No. It says "Have you ever been convicted." He was convicted.

Senator Laird: Wait a minute; you did not listen to my question. If the employer says "Have you a criminal record," he can say "No."

Mr. Stevenson: That would be true; he could say "No."

Senator Laird: If he is given a job and subsequently it comes to the employer's notice—

Mr. Doucet: I think the answer is no. He could not deny that he has a criminal record. It is a criminal record of conviction. He has been convicted, although he has been pardoned. The fact of the conviction is still there. I do not know the influence that this would have. I know of an occasion in Ontario where a person did not receive a pardon and denied the conviction. Subsequently he was fired from the firm. He applied to the Ontario commission and was rehired. That person never received a pardon. I suppose that in the case of a pardoned person it could be true.

Senator Laird: Is there any real redress? I cannot see what good this pardon business does.

Senator Prowse: It gives you a false sense of security.

Mr. Doucet: There are a lot of benefits under the existing legislation. There are some legal benefits. For example, he may find employment with the federal government and the disqualifications that he may be subjected to under the Criminal Code are removed. There are a number of good things under the present legislation, but what you have mentioned is certainly a difficulty and something that we want to solve.

Senator Laird: Let us take one more instance. Do you know of any cases where an individual has been refused admission to another country—for instance, to the United States—because of having disclosed the fact that he was convicted and pardoned?

Mr. Doucet: I was recently dealing with some correspondence of a case where a person forgot about the conviction, which took place approximately 30 years ago. He wanted a job in the United States with an American firm. He was denied a visa on the ground that he had been convicted.

Mr. Stevenson: There have been cases in my experience where the same situation has just been described, where he came and obtained a pardon and then went to the American authorities. The fact of the pardon was very useful. They accepted that he had been of good conduct, and an investigation had been done. We supported him. We said he was rehabilitated, and so the American authorities accepted that and allowed him to come in. So there is some benefit. But I would think it is more psychological in most of the cases—to relieve him of the guilt of the conviction

he has been living with for years. That is the benefit, more than the real tangible benefit for employers, credit bureaus, and so on.

Senator Neiman: My question is a supplementary regarding the procedure of bringing out the fact of the criminal record and the subsequent pardon. If an accused is asked whether he has ever been convicted, can the Crown go back to your department and ask what that pardon was all about, and do you grant it in all circumstances? Is this brought out during the course of a trial, before sentence is passed, or later on? Do you allow the Crown to see this?

Mr. Doucet: There is a discretion granted to the minister to disclose. My experience is that the request would normally come to the RCMP, probably from the local police, to know whether or not a person is convicted, or has received a pardon. It normally would be on the conviction side, because they do not know about the pardon. The answer might be that "We have no record." In that situation the person must know that the convicted person has received a pardon, and go to the minister and ask for disclosure. The minister has to satisfy himself that the disclosure will be in the interests of the administration of justice.

Senator Neiman: He has to make an individual judgment every time? You do not do this automatically when the Crown Attorney from Metropolitan Toronto writes in to you?

Mr. Doucet: I do not know of any case where the request has been received and granted. There may be some.

Senator Neiman: Received and granted?

Mr. Doucet: Yes. If the minister decides not to disclose the information, there is no possible proof of the conviction by the Crown Attorney, because you would have to obtain a certificate of conviction from the court. Under the Criminal Records Act those records have been expunged, so the clerk of the court does not have a copy of the conviction. It has been sent to the Commissioner of the RCMP under section 6 of the act. If the minister decides not to disclose that information, the Crown Attorney will be in a very bad position to prove it in court.

Senator Neiman: Is the criteria known on what basis he may grant or deny access to this information—known not necessarily to the layman but, say, to the Crown in the various jurisdictions?

Mr. Doucet: There is nothing in the act that would limit or give an indication on which grounds. He has to satisfy himself that the interest of justice is there. To take another example, someone has been convicted of perjury and has been pardoned. He is the main witness in a capital case. We may have a situation where in the interests of the administration of justice it would be good that the conviction be disclosed. That is an extreme example.

Senator Prowse: He may say no, he has not got a record. He is again committing perjury without the intent.

Senator Neiman: Do you warn them when they receive the pardon? Is there a warning on it that if they are asked they will have to admit that they were convicted, so they cannot fall into this trap?

Mr. Doucet: It is not on the official document, but some information is passed along to the applicant to that effect.

Senator Langlois: What is the form of this document? Is it a kind of diploma?

Mr. Stevenson: It is a beautiful document. You could frame it.

Mr. Doucet: In fact, we received a civil request from a lawyer in Quebec that someone wanted to have this document hung on the wall. We were asked to change the information, because the information on the official document contains the description of the offence. We therefore had a request from a lawyer in Quebec, who had asked for a pardon, to leave off that part.

Senator Prowse: It's like the fellow who was discharged from the insane asylum who said he could prove he was sane.

[Translation]

Senator Langlois: Let us suppose the Minister receives a request of revocation of pardon, what does he do? He has to get in touch with your division to get the record.

Mr. Doucet: I am sorry, it is Mr. Dupuis' division.

Mr. Dupuis: What happens, when we consider a possible revocation, as I was saying earlier, the first thing is that we receive a notice of the RCMP that an individual has already been convicted. Later on, the Clemency Division initiates the necessary investigations. If, during the investigation, it is necessary to release the information about a pardon granted to some people, in this case, they ask for the approval of the Minister, and the necessary investigations are made. Subsequently, the case is submitted to the National Control Board which makes a recommendation to the Minister, whether or not the pardon granted should be revoked.

Senator Langlois: I don't understand when you say that such a request is made to your Clemency Division. The revocation of a pardon is involved, therefore, you reverse the process of your clemency division.

Mr. Dupuis: I do not follow you.

Senator Langlois: I think the main duty of your Clemency Division is to grant pardons, to exercise some clemency, but there, you do the contrary, you revoke a clemency already exercised.

Mr. Dupuis: Yes, we do it because it is provided by the act, precisely because there is a possible revocation in some cases. Among others, if the individual is convicted subsequently.

Senator Langlois: It is still a reversed process.

Mr. Dupuis: Yes, if you like. In those cases, we grant clemency.

[Text]

The Chairman: Thank you for your help, gentlemen. Do honourable senators feel that it might serve a purpose to reproduce the form of the application as a schedule to today's proceedings?

Senator Asselin: I so move, Mr. Chairman.

The Chairman: It is moved by Senator Asselin that the form of application be printed as a schedule to today's proceedings. Is it agreed?

Hon. Senators: Agreed.

(See Appendix).

The Chairman: Senator Godfrey wishes to raise one point.

Senator Godfrey: As an inexperienced, and some might say ignorant senator, I want to raise a point about which I am confused. In all that I have read about the Senate and about the conduct of committees of the Senate, and based on what little experience I have seen in other committees, I understand that public servants are not to be asked questions by honourable senators on matters of policy. I think we should decide whether that is the policy of this committee or not. Certainly this afternoon some of the witnesses were asked their personal opinions on matters of policy.

Senator Asselin: It was a very good session this afternoon.

Senator Godfrey: Yes, but I think we should decide in our own minds whether or not this will be the policy of the committee. I know that in the Banking, Trade and Commerce committee, questions of policy must be asked of the minister, not the public servants. I just want to get the matter settled.

Senator Langlois: Speaking to Senator Godfrey's point, it is not that the question cannot be put to the public servant, but that the public servant is not obliged to answer questions on matters of policy.

Senator Frowse: If he is embarrassed by it, he does not have to answer it.

The Chairman: I listened to the questions very carefully and I do not think any question was embarrassing to the witnesses.

Senator Langlois: What Senator Godfrey is referring to, I think, are questions related to forthcoming legislation.

The Chairman: Well, the witness did not answer that question.

Senator Godfrey: It was not that. I was more concerned with the questions asking for his personal opinion as to whether or not there should be an automatic pardon. In any event, it is up to the witness, not the chairman. We can ask the questions, but it is up to the witness to decide whether or not to answer.

Senator Prowse: In explanation, it should be made clear that the question regarding an automatic pardon was asked and the answer was given that he did not think there should be an automatic pardon because of the difficulties involved. I do not think that is really a matter of policy as much as saying that it carries with it certain difficulties in itself.

Senator Asselin: He gave us his personal opinion on the question.

Senator Godfrey: I think Senator Hayden is a little strict. He rules such questions out of order.

Senator Fergusson: It seems to me we would be a little more considerate of our witnesses if we did not ask that type of question. These witnesses are not used to appearing before Senate committees and they may not know that they have the right to refuse to answer questions on matters of policy. I think it would be better for us not to ask those questions.

Senator Langlois: We will let the chairman act as an ombudsman for the protection of the witnesses.

The Chairman: The next meeting of the committee will be Tuesday, February 25, both morning and afternoon sittings.

Senator Asselin: Mr. Chairman, it is very difficult for senators from Quebec to be here for 10:30 a.m.

Senator Langlois: Perhaps we could meet at 11 o'clock on Tuesday morning.

The Chairman: I am flexible. Because of the number of committee meetings, it is impossible for us to meet on Wednesdays and Thursdays. I suggested a meeting Wednesday night, but I was told that honourable senators retain that for other purposes.

Senator Asselin: I would move that we meet at 11 o'clock, Mr. Chairman, not 10:30 a.m.

The Chairman: Are honourable senators agreed?

Hon. Senators: Agreed.

Senator Godfrey: Mr. Chairman, before we adjourn I should like to raise the matter of the printed proceedings of previous testimony. Some of the witnesses to appear before the committee should read the previous testimony. How long does it take to get the printed proceedings?

The Chairman: I am told by the Clerk of the Committee that we should have some by Thursday. There have been delays because of the translation.

Senator Neiman: Mr. Chairman, I agree with Senator Godfrey's point. I have had members of the Bar Association ask to see the previous testimony. They want to be able to speak to these very points.

The Chairman: I heartily agree. I understand that it has been difficult to be up-to-date because of the number of committee meetings.

Senator Prowse: One of the difficulties, Mr. Chairman, is that they try not to distribute the proceedings until both the English and the French versions have been printed.

Senator Langlois: The problem also lies in the fact that the House of Commons has precedence over us in the printing of proceedings. The Senate is the last to be served, and that should be remedied.

The Chairman: I will be very glad to take it up with the Deputy Leader of the Government.

Senator Langlois: You will get nowhere.

The Chairman: One other point before we adjourn. This committee was considering a bill to amend the Territorial Lands Act last November, consideration of which was adjourned because some members of the committee felt that the minister should appear to explain the legislation. The minister can appear on February 25. The discussion would not take long, but he is rather anxious to have this legislation enacted.

Senator Langlois: Is this the bill appointing a joint provincial commission to determine the boundaries between Alberta and British Columbia?

The Chairman: No, this is an amendment to the Territorial Lands Act which prohibits employees of the Govern-

ment of Canada from holding shares in a corporation or company with an interest in any territorial lands. I doubt that the minister would take more than half an hour, at the most. I am again in the hands of the committee. Should we call a special meeting with respect to this, or take advantage of the fact that we are meeting in any event? He can appear on Wednesday and we might suggest that we meet when the Senate rises, but I do not think we can just tell the minister to stand by.

Senator Langlois: Is it this Wednesday?

The Chairman: No, it is the 25th.

Senator Neiman: My recollection of that bill, which is very short, is that the question I raised and thought was rather important was why such a particular type of legislation would apply only to those within the minister's own department. It seemed to me that if we need such legislation it should be equally applicable to all civil servants. The officials were to provide an answer and return to decide whether it should be included in another act but we have not heard anything from them.

Senator Prowse: Actually, the answer is, senator, that those employed in the department or any one dealing with the lands is required to file certain information, which the employees of that department could then use to their advantage in making investments.

Senator Neiman: But that is applicable to other civil servants in other areas.

The Chairman: I have the proceedings and the conclusion was that we would arrange to hear the minister and meet at the convenience of the committee. The minister has now advised me of three dates, February 24, 25 and 26, or 25, 26 and 27. Since we are meeting on the 25th and I do not believe it will take more than half an hour at the most, I thought we might arrange it for then. However, I am prepared to call a meeting on the following day if the committee will give me permission.

Senator Langlois: I move that we adjourn our present hearing and provide for a very short session to hear the minister with respect to this particular legislation on February 25.

Senator Prowse: That matter is not as simple as it may appear and I would not wish anyone to guarantee a minister that he will not be kept here for quite a period of time.

The Chairman: You know more about this than I do.

Senator Prowse: I have seen similar legislation in our own legislature and let me tell you that I am not sure that it should be limited to one person or group. I am not sure that it should not also apply to elected and appointed persons in addition to civil servants.

Senator Neiman: It is one of those simple bills, Mr. Chairman, which could get us into trouble. Why could we not arrange the hearing for the Wednesday afternoon when the Senate rises?

The Chairman: I might suggest we meet at four o'clock, whether the Senate sits or not.

Senator Langlois: You need a motion.

The Chairman: I need a motion.

Senator Prowse: It is the whole question of inside information now.

Senator Neiman: I think we need a special day. I would hate to tack it on the end of the four witnesses on the 25th.

The Chairman: I will communicate with the minister and if a time during Wednesday afternoon is convenient I will notify Senator Langlois and propose that we be authorized to meet then.

The committee adjourned.

12. Details of Offence(s) and conviction(s) — Détails de l'infraction(s) et condamnation(s)

Date/Date	Court & Place/Cour et lieu	Offence/infraction	Sentence/Sentence

13. State your Social Insurance Number.
Mentionnez le numéro de votre assurance sociale

14. Describe the circumstances of the commission of each offence. (Attach extra sheets if necessary).
Décrivez les circonstances qui ont entouré la perpétration de chaque infraction. (Utilisez des feuilles additionnelles, au besoin)

15. Name at least five persons to whom an investigator may refer in confidence. Do not include relatives, employers or employees. Indicate by an asterisk (*) if reference is not aware of your conviction(s).
Nommez au moins cinq personnes à qui un enquêteur peut demander confidentiellement des références. Ne mentionnez ni parents, ni employeurs, ni employés. Indiquez par un astérisque (*) si le répondant n'est pas au courant de votre [vos] condamnation(s).

Name/Nom	Address/Adresse	Telephone No. N ^o de téléphone	Name of Employer/Nom de l'employeur

16. Upon receipt of this application, I understand that the information may be used in conducting an investigation and copies may be forwarded on a confidential basis to the appropriate law enforcement agencies.
Il est entendu que les renseignements fournis dans la présente demande peuvent servir à mener une enquête et que des copies peuvent en être envoyées à titre confidentiel aux organismes appropriés chargés de l'application de la loi.

17. Declaration
I certify that the statements made by me in this application are true and complete to the best of my knowledge.

Déclaration
J'atteste que les déclarations que j'ai faites dans la présente demande sont, autant que je sache, vraies et complètes.

Day/Jour

Month/Mois

Year/Année

Signature

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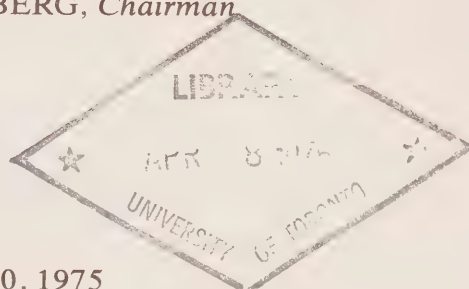
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 8



THURSDAY, FEBRUARY 20, 1975

Complete Proceedings on Bill C-370, intituled:
“An Act to amend the Electoral Boundaries Readjustment Act”

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Langlois
Buckwold	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Sullivan
Lang	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Tuesday, February 18, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Molgat, seconded by the Honourable Senator Laird, for the second reading of the Bill C-370, intituled: "An Act to amend the Electoral Boundaries Readjustment Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Molgat moved, seconded by the Honourable Senator Gélinas, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, February 20, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 9.00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Fergusson, Flynn, Godfrey, Langlois, Neiman and Quart. (7)

Present but not of the Committee: The Honourable Senator Molgat.

The Committee proceeded to the examination of Bill C-370 intituled "An Act to amend the Electoral Boundaries Readjustment Act".

Mr. John Reid, M.P., Parliamentary Secretary to the President of the Privy Council, was heard in explanation of the Bill.

On motion of the Honourable Senator Neiman, it was *Resolved* to report the said Bill without amendment.

At 9.15 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Patrick J. Savoie,
Clerk of the Committee.

Report of the Committee

Thursday, February 20, 1975

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-370, intituled: "An Act to amend the Electoral Boundaries Readjustment Act" has, in obedience to the order of reference of Tuesday, February 18, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

H. Carl Goldenberg,
Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Thursday, February 20, 1975

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-370, to amend the Electoral Boundaries Readjustment Act, met this day at 9 a.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: I would like to start promptly because Mr. Reid is due elsewhere shortly, I asked Mr. Castonguay, the Representation Commissioner, to appear. He is in Regina and was due to arrive here last night, but the airports are not operating and since Mr. Reid is parliamentary Secretary to the President of the Privy Council and, I believe, piloted the bill through the house, I thought that we would ask him to respond to questions of honourable senators. I do not think it is necessary to ask Mr. Reid to make a preliminary statement. Perhaps Senator Flynn would ask such questions as he has in mind.

Senator Flynn: The question I wish to put is that apparently this bill would delete only two words in subparagraph 13(c)(i) of the Electoral Boundaries Readjustment Act. If I remember correctly, those words were the "relative rate of growth" of population

Mr. John Reid, M.P., Parliamentary Secretary to the President of the Privy Council: Yes, "relative rate of growth".

Senator Flynn: Regarding "relative rate of growth", and "the sparsity or density of population", it seems to me that the rule was that any one of these could be taken, but it was not necessary to take the three together. I cannot see the problem the commissions would have encountered with the wording as it was previously. I wonder if you have any particular case which would illustrate the problem which you are endeavouring to solve.

Mr. Reid: Yes, senator. The problem that members from the other place have is that the utilization of the 25 per cent differential permitted in the act is controlled by the clause which I am amending. The 25 per cent was originally included in the legislation to provide a differential in favour of the rural areas. However, in the *Debates* in the House of Commons when the bill went through—

Senator Flynn: Do you mean the original bill?

Mr. Reid: Yes—The phrase "relative rate of growth" was inserted by the urban members to balance the two clauses, so that instead of having a prejudice in the clause in favour of the rural areas they were balanced more or less equally, and commissions have interpreted the utilization of the 25 per cent as being balanced in many cases in some provinces. So there was a cry in the other place that the original form should be brought back, because commissions were applying relative rate of growth, on the one

hand, and balancing it against the ease of access, historical and geographical factors and the size of the ridings, on the other.

Senator Flynn: Is it your opinion that all commissions interpreted the act in that manner?

Mr. Reid: It is very hard for me to say. I know that in Ontario we felt this. Quebec, Maritime and Western members felt it. There were members, of course, who felt that there ought to be no differential at all and other members who felt that the commissioners were not being sufficiently generous.

Senator Flynn: I am not speaking of complaints—

Mr. Reid: No; I can only speak for the Province of Ontario.

Senator Flynn: Is Mr. Castonguay not a member of all the commissions? That relates to the specific problem which I am endeavouring to identify.

Mr. Reid: Yes, Mr. Castonguay, however, while a member of the commissions, does not partake in their decisions. According to the Representation Commissioner Act he prepares a draft map for them, travels around and provides them with the necessary instruction. By his own testimony before the House of Commons standing committee, once the commissions get rolling on their own and start making their own decisions, his work is basically done. He himself does not partake in the actual decisions.

Senator Flynn: Would you have any particular instance that could be illustrated by the report of a commission showing what the real complaint is?

Mr. Reid: I think the classic case was the Province of Alberta, in which all of the ridings have an equal population base but some rural ridings had larger populations than urban ridings, and it was felt that there ought not to have been that kind of distribution taking place.

Senator Flynn: Do you think if that happened it was because of the wording of the act as it stood, before this amendment was proposed?

Mr. Reid: Yes, because the way the commissions interpreted the phrase "rate of growth" it was a standoff. The commissioners had the possibility at their discretion of using it. If they chose not to use it, they did not have to use it. Some commissions chose not to; some commissions chose to. What I am looking to do in this bill is to ensure that they will have to consider the 25 per cent as an automatic factor.

Senator Flynn: Possibly another solution would have been to establish some referee for all the commissions as to the exact interpretation to be given to the act.

Mr. Reid: The basis of the system is that there be 10 commissions set up to interpret the act as it suits their particular province. Mr. Castonguay has been set up to provide them with basic instructions with respect to what they can and cannot do in the act. By his own testimony he has admitted that his influence is greatest at the beginning, when they are all new at the game, but, then as they begin to take hold, his influence diminishes rapidly.

Senator Flynn: That comes to my point: you have commissions which operate differently from one province to another.

Mr. Reid: Yes.

Senator Flynn: Do you not think that the solution would have been to establish real authority over these commissions, since by Mr. Castonguay's own admission he loses that grip after a while?

Mr. Reid: It would be very difficult to establish that authority over the commissions, unless you were to change substantially the Readjustment Boundaries Act, because the essence is that each province has its own particular character. You choose commissioners who are representative of the province, and then you give them a free hand along with the guidelines in the act to come up with a political map that is beautiful.

Senator Flynn: But I do not see, in all frankness and with all due respect, that the amendment that you are suggesting in this act will cure any evils which you have described.

Mr. Reid: If I may so, Senator, this bill was one of four bills which went before the house Committee on Privileges and Elections.

There was my proposal here. I had a second proposal, which would have allowed 35 per cent differential between the large, what we call "schedule three" ridings. Another member, Jean-Jacques Blais, had a bill which would have allowed 35 per cent on the down side, between all rural ridings and urban ridings, and André Fortin, of the Créditistes, had a bill which would have forced the commissions to consult with members of parliament a month before the first maps were released publicly.

Mr. Fortin did not attend the meeting, but the committee, after hearing from three of us, decided that this proposal that I had put forward was the one which was mostly likely to deal with the problem. The reason for that is that if you do not change the criteria under which they use the 25 per cent, it does not make a whit of difference if you increase the differential, because they do not have to use it so long as they have the loophole which is enshrined in the words "rate of growth."

Senator Flynn: At any rate, I can see that this bill is the result of 4 bills initiated by private members, and not by the government or by the commissioner.

Mr. Reid: That is right.

Senator Flynn: These four bills were referred to a committee of the other place, and this solution was picked by the committee.

Mr. Reid: Correct.

Senator Flynn: Was Mr. Castonguay in attendance at that committee?

Mr. Reid: No, he was not.

Senator Flynn: He was not?

Mr. Reid: No. He did attend an earlier meeting when we had a bill in the name of Marcel Lambert from Edmonton.

Senator Flynn: Yes. There was one, I remember.

Mr. Reid: At that time that is where we got the idea that the real problem we were trying to deal with was the phrase "rate of growth." Mr. Lambert also tried to do the same thing through a different way, by forcing the commissioners to give reasons for each decision they took.

Senator Flynn: That proposal by Mr. Lambert was not adopted?

Mr. Reid: Yes, it was.

Senator Flynn: It was?

Mr. Reid: Yes.

Senator Flynn: Was it a bill?

Mr. Reid: Yes, it was.

Senator Flynn: Has that bill passed the Senate?

Mr. Reid: Yes, it has received royal assent.

Senator Flynn: In this session?

Mr. Reid: Yes.

Senator Flynn: Oh, yes, I remember. In any event, a commissioner has to give reasons for each departure from the general rule.

Mr. Reid: No, for each decision he makes.

Senator Flynn: For each riding, in other words.

Mr. Reid: That is right.

Senator Flynn: I would be curious to see what it gives.

Mr. Reid: I also would be rather curious. Since we have to run it, my curiosity is probably going to be rather high.

Senator Flynn: These two solutions are not necessarily the suggestions or ideas or views of Mr. Castonguay?

Mr. Reid: No, I would not put it that way. We have to take our own responsibility.

Senator Flynn: I do not disagree with that, but I was trying to seek expert advice.

Mr. Reid: I must say that Mr. Castonguay has come before the privileges committee and recommended that his job be abolished for the very good reason that once the commissions get going he is kind of frozen out and has no role to play. He claims that he does play an important role in that he provides them with the technicians and with the map makers, and he feels that this is the most important function that he performs. But I also have felt that he performs a greater co-ordinating function than he cares to admit.

Senator Flynn: Should we not reinforce his job in the act?

Mr. Reid: There are discussions going on now, I think it is fair to say, with the Chief Electoral Officer and Mr. Castonguay on how to proceed to re-organize his office.

There is a dilemma. If we bring it in under the office of the Chief Electoral Officer, to some extent that mitigates against his independence. At the same time, Mr. Castonguay says that since he does not have anything to do for about eight years after redistribution, it becomes a difficult job in which to keep a competent person. There are very real dilemmas that face the government in trying to work out a proper relationship of Mr. Castonguay's job.

Senator Flynn: With the provincial commissions?

Mr. Reid: Correct.

Senator Flynn: This is one endeavour to solve some or one of the problems—

Mr. Reid: That is correct.

Senator Flynn: —that are inherent in this problem of redistribution—readjustment of boundaries. Thank you.

The Chairman: Are there any further questions? Shall I report the bill without amendment?

Senator Neiman: I so move.

The Chairman: It is so moved. That concludes the committee hearing. Thank you very much.

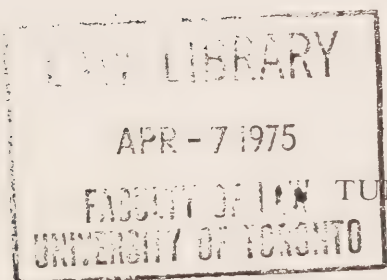
The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
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The Honourable H. CARL GOLDENBERG, *Chairman*



Issue No. 9

TUESDAY, FEBRUARY 25, 1975

Fifth Proceedings on Bill S-19, intituled:

“An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code”

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Langlois
Buckwold	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Sullivan
Lang	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Senator Deschatelets, P.C., for the second reading of the Bill S-19, entitled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

February 25, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:00 a.m.

Present: The Honourable Senators Goldenberg (Chairman), Asselin, Fergusson, Godfrey, Langlois, McGrand, Neiman, Perrault, Prowse and Quart. (10)

Present but not of the Committee: The Honourable Senators Cameron and Heath.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee continued its examination of Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

The following witnesses, representing the Victoria Drug Concern Society, a parents' group, were heard by the Committee:

Mrs. Carol Haley;

Mrs. Thora Antrobus.

At 12:45 p.m. the Committee adjourned until 2:00 p.m.

At 2:00 p.m. the Committee resumed.

Present: The Honourable Senators Goldenberg (Chairman), Asselin, Buckwold, Fergusson, Godfrey, Laird, Langlois, McGrand, Neiman, Prowse and Quart. (11)

Present but not of the Committee: The Honourable Senator Heath.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard by the Committee:

Mrs. Carol Haley, Victoria Drug Concern Society;

Mrs. Thora Antrobus, Victoria Drug Concern Society;

Dr. Harry Klonoff, M.D., Professor, Department of Psychiatry, University of British Columbia;

Dr. Andrew I. Malcolm, M.D., Psychiatrist, Toronto.

At 4:30 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, February 25, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 11.00 a.m. to give consideration to the bill.

Senator H. Carol Goldenberg, (Chairman) in the Chair.

The Chairman: Continuing our study of Bill S-19, honourable senators, we have two witnesses this morning representing one organization. Then we have a professor of psychiatry, and another witness this afternoon. The Canadian Criminology and Corrections Association will not be able to appear, but I would like to call a business meeting of the committee *in camera* after the conclusion of our hearing this afternoon, and I would appreciate it if honourable senators were to attend.

Senator Godfrey: Mr. Chairman, before we start with the witness this morning, may I mention that somebody has just drawn to my attention an article which appeared in the *Montreal Gazette*, in which it says that:

Liberal Simma Holt said yesterday she had been told not to appear before the Senate committee studying the government's marijuana bill.

The Vancouver Kingsway MP would not say who said she cannot speak to the committee, but added: "You go ask (Senator) Carl Goldenberg, you ask Mitchell Sharp."

I am just raising the question as to whether or not she was told she could not appear before the committee, and by whom?

The Chairman: Mrs. Holt saw me immediately after Dr. Stephenson presented the brief of the Canadian Medical Association, and said she wanted to come and reply forthwith. I told her that she should give careful consideration to that request, as a member of Parliament who in due course would have to consider this legislation in the house. I said, "Watch how things go," and I left it at that.

Senator Prowse: I think, sir, the general practice is that members of one house do not appear before the committees of the other house. They can go and listen, but unless it is a joint committee I think it is a matter of privilege in both houses.

The Chairman: It was discussed in the House of Commons yesterday, but affecting another member.

Senator Fergusson: Mr. Chairman, even if it is a general practice, is there any reason why someone may not come? I know that what happens with regard to the Senate is that the Commons have to send a message to the Senate and ask the Senate to agree that that senator appear before a house committee; but as I understand it there is no similar

practice regarding the House of Commons, and who would decide whether she may come or not?

The Chairman: I do not know.

Senator Godfrey: Is it not this committee that decides, at some point?

The Chairman: This is one of the items I have on the agenda for our meeting later in the day, as is also the question of other witnesses. I think it is more appropriate to discuss it then.

Senator Fergusson: Yes, as long as we have a chance to say something.

The Chairman: Yes. I have the agenda here.

Senator Quart: Good.

The Chairman: Our first witnesses this morning are Mrs. Carol Haley and Mrs. Thora Antrobus, representing the Victoria Drug Concern Society, formerly known as the Canadian Concerned Citizens Association, this being a parents' group. I call on Mrs. Haley first. She can state her interests and Mrs. Antrobus' interests in this matter, before proceeding to present her views.

Senator Asselin: Has the witness a brief?

The Chairman: Do you have anything in writing?

Mrs. Carol Haley, Victoria Drug Concern Society: Mr. Chairman, I did have something and I gave it to someone here who was going to see that copies were made of our proposal, and also of the British Columbia bill.

The Chairman: I understand that this material is being reproduced. Would the senators prefer to wait until the documents are available, or shall we ask Mrs. Haley to begin?

Senator Asselin: I made the point a few weeks ago, Mr. Chairman, that when a witness appears before the committee we should be entitled to have the brief, not necessarily in advance but certainly at the beginning of the hearing so that we can follow it while the witness is speaking and so that we may be able to put appropriate questions.

The Chairman: There is no doubt about it that it makes things much easier.

Senator Quart: Was Mrs. Haley advised that she should have extra copies prepared?

Mrs. Haley: No.

Senator Godfrey: Were you asked to send them in ahead of time?

Mrs. Haley: No.

The Chairman: It has been very difficult in the past two weeks to ask witnesses to mail documents to the committee.

Senator Asselin: If we could have the briefs two hours before the hearing, that would do.

Senator Godfrey: Perhaps we could have a summary?

The Chairman: Yes, we could ask Mrs. Haley to give us a summary, while we wait. Is Dr. Klonoff here?

Dr. Klonoff: Yes, Mr. Chairman.

The Chairman: Having heard this argument, Dr. Klonoff, do you have a written summary of your remarks?

Dr. Klonoff: I have a written summary in my own handwriting, but I do not have one available for distribution. If you like, I could ask Senator Perrault's office to try to provide me with a secretary and I could do what is necessary in ten minutes.

The Chairman: That would be helpful, Dr. Klonoff, because you are appearing this morning after Mrs. Haley and Mrs. Antrobus, so if you could do as you suggested, it would meet the wishes of the senators.

All right, Mrs. Haley, tell us about your group first.

Mrs. Haley: First of all, I am the parent of a heroin addict right now. He started out at the age of 14 and through peer group association he started with glue sniffing, then marihuana, then into chemical drugs and then on to the hard drugs. Of course, not all kids who use marihuana necessarily go on to the hard drugs at all; about 50 per cent of the group that my son was in did so and the other half did not. Why, I do not know. Perhaps it was a case of personality makeup. There can be numerous reasons why. Having regard to the system in our prisons at the present moment, we, as parents, will not turn our children in because the penal system does not work. There is no rehabilitation whatever in the penal system for drug addicts. In British Columbia at the present time 85 per cent of the criminal element in prison are there because of drug-related crimes. We also find that many youngsters have to wait on bail for a long time before they can appear in court and this is extremely difficult for them and for their families. The entire drug problem creates difficulties, not just for the one who is using drugs, but for the family, society and the whole country. In British Columbia we have 65 or 67 per cent of all the heroin addicts in Canada and the age limit is going down as well as drug use is going up.

Furthermore, at the present time in Victoria heroin is selling at \$45 to \$60 a cap, and there is no kid who can afford that. When I started looking for help for my son, I went everywhere. I started with my family doctor but he was unable to help. He said, "I am sorry, Mrs. Haley, we have no facilities and no follow-up treatment." Then I asked for referral to a psychiatrist and I received the same answer. Then I telephoned the police and they said that they would come up and speak to my son and to the group as a whole that he was involved with and also to all the parents, but they said that if they found any of our children in possession of any of the drugs they would have to do their job in the normal way. This is something that we fully accepted and understood. Most of us as parents know that all kids, particularly heroin users, do push to support their habit and therefore we are caught in a bind because we know that our children may be sent to prison for

having five or six caps or more on them. Since we know that putting them in prison is not going to do the job, why bother?

Personally I took it upon myself, since there was no other help available, to keep my son in the only place where I could help him, and that is at home, to try to bring his tolerance level down and then put him into cold turkey, which is exactly what we did.

Also in British Columbia the only form of treatment that is legal right now is the methadone treatment which is much more addicting and is much harder to come off than heroin is; and many, many of the kids do not want to go on methadone at all. In order to get into the clinic for methadone treatment for drugs, which we feel is a medical-social problem, they must show up for five straight days with positive urine test with heroin in it. Now, where do these kids get the money for five days to get one can of heroin? I am speaking of the time when it was \$20 a cap. Now it is \$45 a cap. None of the kids can afford that, and most of the parents cannot afford it, either. They have already been ripped off many times. Nevertheless, from those five days many parents have put up the money in order to get medical treatment for their children and we feel that this is putting us in the position where we, too, have to cater to the illicit criminal element. They write to me in an attempt to line themselves up with jobs and so on. They must have a home to go to.

I have a pet peeve against some of our P.O.s because they seem not to have the common sense to avoid placing these children within, say, the middle of Chinatown, where they just need to walk out the door and every pusher is right there and they do not stand a chance. Two girls in particular were placed in this position. Right around the corner was one beer parlour where it is a well known fact that the traffickers are there constantly. Two blocks down near the Churchill Hotel also is a real hangout that has been so for many years for pushers and drug addicts, the hard core in particular. They do move now and again into various pubs, just to keep a little ahead of the police. There is also a great deal of pushing done from homes. It is not just downtown, or in Chinatown; it is in homes, it is everywhere. Many, many of our kids start on the drugs while in school, at the junior high school level, at ages 13 and 14. Mainly, when I first started in this, the marihuana was coming in at the university levels. That is back in 1964, '65 and '66. Since that time it has worked from there into our high schools and down to our junior highs. Now it is beginning to enter the elementary levels.

For a few years in own area LSD more or less died out, but now, because of the cost of the heroin the kids are dropping everything and anything they can get their hands on. LSD is \$1 a tab, so fine, they will take the LSD, but as far as I am concerned the chemical drugs are more dangerous and do far more harm than the heroin. They are not addicting, but they are very, very more difficult to deal with while they are on these chemical drugs. Even the marihuana, although people wish to believe that it is just a high and it is all fun, does introduce the children to the subculture. From that stage on they just keep going further and further into the subculture, right into the penal system which, again, is another form of subculture. We see kids of 13 and 14 put in with homosexuals, bank robbers and the whole bit. We are simply teaching them how to be more professionally criminal.

That is the way we look at it as parents. We do not desire our children to be kept in this environment and we feel

that we, the society, are the criminals for allowing this to go on and on and on. It now costs approximately \$13,000 a year per person to keep them in prison. There is no rehabilitation whatsoever, so what a waste of money! The taxpayers scream: "Take them out and shoot them; they cannot be cured." This is not true; some of them have been on it for 20 years and are now off. However, always, just as an alcoholic, they have this weakness, that just one touch of it may mean they are back again. It make take five, six eight or 10 times, to keep bringing them down when they slip off, bringing them down and putting them into the cold turkey again and, eventually, one of the times will work.

All the kids who come to me now are volunteering; they are not being forced in any way whatsoever. They are begging and pleading for help. There are also those whom I consider to be the real criminals, the so-called businessmen, the white collar fellows, who put up the money for these kids. They will give them anywhere from \$200 to a few thousand dollars to go over to Vancouver, or wherever the place may be, pick up the tabs or the drug bags and the kids are caught for possession. You see, the law relates to possession, not who supports it and so on, but the actual possession. The real criminal, the one who is making the money, is he who is putting up the money in the first place. The kids go over and, sure, they get picked up with five or six caps, serve their time in prison and achieve a criminal record, which puts them down further. At the same time, they also are extremely ashamed of their addiction problems. They are behind many, many masks and it takes a great deal of time and effort to build up their confidence that they are worth something and can make it if they will just stick with it.

This cannot be done without follow-up, however. Right now the unemployment situation is such that they come out of prison and find no jobs. This is also true when they come off drugs. Personally, as far as I am concerned, this business of six days and they are off the drugs is a bunch of malarkey. It takes a long time to get them physically, mentally and emotionally over the whole situation. If they have spent three, four or five years because of the lack of facilities or whatever the case may be in this drug subculture, then it is going to take equally that amount of time to get them off it. Also, they have learned that the only place they can feel comfortable is with the subculture, which understands the whole problem and understands them. As far as I am concerned, the straight people, as they call them, do not give them too much of a chance. They are very much afraid of heroin addicts.

Many, many people do not realize that there are many heroin addicts amongst us with whom the straight people cannot even start, particularly with the kids. My son could go around and cash cheques, or anything he pleases, much easier than I could. To cash a cheque I would have to produce all the I.D. in the world, but he has a marvellous personality and could walk in just like that and cash a cheque for a cap any time. This is not good. When one goes around with these kids, they say that they wish they could get the monkey off their back. All the kids, with the exception of one heroin addict, have stated to me. They say please do not legalize even marihuana; that is where we started. It was just for kicks and we were having a ball. We were having fun and like the high. They do like that high and this is what they were after. Then someone would say: "Try this; it will give you a little longer high." It could be LSD, et cetera, and they would try that. Then some of

them, of course, went on to heroin—that is the cream of the highs—and to opium and cocaine. All of them are on the increase. The problem is not decreasing whatsoever.

This business of legalizing the situation and it will do away with the problem—that is a bunch of malarkey. The same applied to the legalization of alcohol. That did not decrease the problem of alcoholism, which is the largest problem we have right now in British Columbia. Also, there again, facilities are very limited and follow-up by professional and lay people comes down to nil in that situation.

When the kids themselves beg, plead and say "Please do not legalize this, this is the way we got into this mess," I think we should listen to them. We should not believe every word they say, because they do become professional cons. They can go into a psychiatrist's office—the parents and the kids know it—and they can con the psychiatrist without his even being aware that he is being conned all the way. That is what is happening.

We had various outlets a few years ago, where the kids could go and get perhaps a week's supply of methadone. But the kids were taking it out on the streets and selling it themselves, instead of taking it. Also, they do not control it on a daily basis. If they have a bottle of methadone, they get high on it. If they are feeling blue and they want to get high, they will just take it. There is no discipline whatsoever with regard to control.

There is also the family situation, where there are often problems. Often the mother is caught between the father and son. Many kids, particularly boys, when they hit the age of 12, want to break away from their mothers and start going out into the adult world. Many fathers are too busy and have very little to do with their children in the sense of bringing their sons into manhood. But this is the time when a boy really needs his father—I would say at the age of 11 or 12 right through until the age of 17 or 18. Many boys feel this neglect. Communication above all between parents, particularly in the father and son relationship, is important.

The more I get into this, the more complex the whole thing becomes. We did study the British system. They did not do away with the criminal aspect completely over there. Many of the kids from Canada went over, and they enjoyed the police interaction there. They liked the game. They even joked with some of the "narks" and said "You blokes are all going to be out of a job if they legalize, and pretty soon we'll have nobody." This is the way it goes. Many of these kids are by no means dumb. They are very intelligent. They are completely underdeveloped after wasting the crucial years of their lives.

With regard to rehabilitation, you have to go back to when the child first went into the subculture, because he has missed normal development and has got off on the other track. Therefore, with rehabilitation, we should go back as much as possible to when he first went into it—we cannot redo the whole thing—and try to bring him through the normal activities that any teenager would go through. As parents we all found that when our kids went onto marihuana, it seemed to enhance the normal emotional pattern that teenagers go through. One day they are in love, the next day they are angry—you name it. It enhance this entire thing and made them difficult to deal with. Also their grades at school dropped.

More research could be done, report-cardwise, on this point, because their marks definitely do drop. They lose

interest in sport and in numerous activities at school and at home. The fighting then begins. They want this and that. You cannot give in to them when they are 13. I do not feel that parents should give in and be too permissive. We have found also that the kids do not necessarily come from bad, broken, strict, or overreligious homes. They come from every type of home, good, bad, rich, poor, you name it. There does not seem to be any particular reason why they go into it other than mainly, I feel, pure pressure at a very tender age.

Senator McGrand: From what?

Mrs. Haley: From their peers at school. The pushers are some of them, and some of their buddies are also pushers.

Senator Neiman: Mrs. Haley, I hope that you and the children realize that the federal government is not proposing to legalize marihuana at the moment. That is a common misconception. We are very concerned about the matters you have been speaking about and the progression of drug use. I wonder if you could fill us in on certain matters from your own experience. At what age do you find that most of the children start taking drugs? Are you saying that most of them start at the public school level in your area?

Mrs. Haley: Very much so, yes. They all start when they enter junior high school, which is usually at the age of 13, grades 8 and 9. That is when they are really introduced to it.

Senator Neiman: How many people are we talking about? Is your concern limited to those in the Victoria area, or do you have some data on British Columbia as a whole?

Mrs. Haley: I have letters that have come in even from up North asking for information, how to get groups together such as ours, and how to get parents, police and addicts coordinating so that we can work on the problem. I have had groups of people ask for information regarding drugs entering our Indian reservations. Indians are down as it is, let alone introducing them to heroin and the drug problem. The problem is everywhere now. I do not know of any place, whether it be a small community or a large city, where it does not exist. It makes no matter where you go.

Senator Neiman: What would you estimate to be the percentage of young people in the schools, at the junior school level, who are using these drugs? Can you give us a rough estimate, or are the children themselves able to give you a rough estimate?

Mrs. Haley: I would say at least three-quarters.

Senator Neiman: Have tried it or use it periodically?

Mrs. Haley: Do you mean marihuana?

Senator Neiman: Yes.

Mrs. Haley: I would say who use marihuana, yes.

Mrs. Thora Antrobus, Victoria Drug Concern Society: All of them, or most of them, have tried it.

Mrs. Haley: I would not say it is 99 per cent, but it is high. A few years ago the school sent around questionnaires. But there is not a child who really is going to answer that questionnaire honestly, because, firstly, the pages are handed out. They say, "You won't be known." But the teachers do know the handwriting. These children

are not stupid. Teachers know the handwriting of their various pupils. Also the forms are taken back in the order of rows, and the kids figure this out. Kids do not always tell the truth on these questionnaires. They are not necessarily going to admit to using drugs. Some do; some don't. Some put down that they have, when they in fact have not. They are just playing games. The amount of marihuana used is extremely high, I would say, and it is growing.

Senator Neiman: Apart from these questionnaires, do you get any type of active assistance, any type of cooperation, from the school authorities, such as the boards of education? Do you get any material sent around?

Mrs. Haley: In the initial stages, no, so we went to them. We phoned the medical association, the law society, school boards, church groups, and what have you—any group we could get hold of, to inform them of what was going on. We met with these groups. The impression of the school board in the initial stages, through the statistics it had gathered from these questionnaires, was that the problem was decreasing. At that, we just about fell off our chairs, because we, as parents, knew that the problem was not decreasing.

The police authorities have stated that they cannot handle the problem alone; that they need to have parental involvement, parental responsibility. The judges know it is pointless to send these kids to jail, as do the parents. The judge in our area has called for alternatives for years, so here goes. I am only a mother, but I will be damned if I will let the drug culture take over my child when I, as a mother and a responsible person, might be able to do something about it.

Senator Neiman: Do you know of any marihuana users or pushers who are sent to jail in your area—and I am talking only about offences related to marihuana?

Mrs. Haley: In British Columbia it is now more or less a system of fines with probation. A first offence usually results in a fine of \$75.

Senator Neiman: That would be for possession for personal use?

Senator Asselin: For simple possession?

Mrs. Haley: Yes.

Senator Neiman: What about traffickers in marihuana, can you think of any cases where the kids were jailed?

Mrs. Haley: There are jail sentences, yes, in certain circumstances.

Senator Neiman: What are the circumstances, if you can identify them?

Mrs. Haley: It would depend on the quantity involved. If it is a joint or two, usually the sentence is a fine and probation.

Senator Neiman: That would be deemed simple possession.

Mrs. Haley: Yes. However, if the kids have baggies and they are known to be putting it out and selling it, then the courts are a little harder on them. Lately it has been mainly fines with probation. We have also gone into this business of alternatives. So far, there are none yet, except methadone, and with methadone we have to go through this five day bit, and all that nonsense.

Senator Neiman: How many of the kids who are on marihuana—and again I realize you will be only guesstimating—would also be using other forms of soft drugs, or what are termed soft drugs?

Mrs. Haley: Most kids have tried marihuana, although not all use it regularly. Many of them use it once a week, and many are at the point where they use it every second or third night. The abusers of marihuana are the ones who seem to be having the greatest problems. For those who use it the odd time, there is no physical harm. It is only when they begin to abuse it that they have real problems.

Senator Neiman: But I am wondering how many marihuana users are also using the chemicals, such as LSD, and so forth?

Mrs. Haley: That is increasing as well, yes. Many kids now are using chemicals.

Senator Neiman: In junior high?

Mrs. Haley: Yes.

Senator Neiman: What percentage, roughly, would you think?

Mrs. Haley: I really could not tell you, senator, but it is fairly high. It is much higher than what people want to believe. Just last week alone I dealt with four kids who were on very bad LSD trips.

Senator Neiman: What were their ages?

Mrs. Haley: They were all 14, 15 years old. LSD died out for a few years because the other things were cheaper. LSD can be picked up for a dollar a tab right now, and they are also using Mescaline and other things. Speed, as far as I am concerned, is one of the hardest drugs with which to deal—much harder than heroin or cocaine, or anything else.

As far as many of the kids are concerned, there isn't a drug they have not tried. Also, when they go to a doctor they are then prescribed drugs. To prescribe drugs to a drug-dependent person is rather ridiculous. Also, they will go into the Eric Martin Institute, which is our institution for the mentally disturbed, where they are kept for 30 days and then put back out on the streets. There is no real rehabilitation achieved. I would say it takes anywhere from 30 to 90 days to get these kids to the point where they can start thinking straight again. When they are on drugs they are not thinking straight at all, particularly those on heroin. You see their names standing in the court docket. They are sick, usually on withdrawal. They are at the point where they say, "Look, just hurry up; do whatever you like with me, please; I am sick, get it over with; send me to prison." In the prisons, of course, they can get drugs.

I know of one case where inmates were growing a little plant of marihuana out in the bush when they were working in the forestry camps. They would go out daily and check the bush. The plant was coming along beautifully, and the night before they were going to pick it, it was raided. So it is ridiculous to jail people. Even the hard stuff is available in prisons.

We are not against the police. We realize they must do their job; they must be tough. We also recognize, however, that kids on heroin and other hard drugs have medical problems; they have a sickness. For that reason, we feel that kids on hard drugs should be moved out of the penal system and into the medical-social field. If that were done, a parent or policeman could bring the kid in for treatment.

Senator Neiman: When you talk about this type of thing, you are always referring to kids. At what point would you take it out of the penal system? There is obviously a large number of heroin addicts and pushers of drugs who will have to stay within the penal system. Are you trying to make some sort of a distinction between kids who push drugs or use drugs and the older group who are doing the same thing?

Mrs. Haley: Well, if a kid goes into drugs at the age of 13, 14 or 15, and is on drugs right up until age 22 or 25, he is still, in certain ways, right back where he started in his normal social development. In other words, he has not progressed in the normal way. He is in a subculture, another world, a world that we are alien to.

Senator McGrand: I have three short questions, which require short answers. Did you say that most of the inmates of prisons in your part of Canada are there because of drug-related crimes?

Mrs. Haley: Yes.

Senator McGrand: You said that businessmen have put up money, sometimes \$200, maybe \$1,000, for children to buy drugs. Tell me something about those businessmen. They do not belong to the Better Business Bureau, do they?

Mrs. Haley: Probably. I would not doubt it. Many of them do, I imagine. We really do not know. They come from all walks of life.

Senator McGrand: My third question: I should like you to put this together for me. You said pressure comes from one's peers.

Mrs. Haley: Yes.

Senator McGrand: You also said, "These children say, 'Please don't legalize drugs' ". Who are the children who say, "Please don't legalize drugs"? Are they the ones who have never touched it or the ones who have been on it and found what a catastrophe it is?

Mrs. Haley: They are the ones who started out just for kicks and ended up in the heroin scene—cocaine, opium, you name it. When they hit these stages, normally they end up in criminal activity. They become indebted to these other people, and before you know it they have what I call the heavies after them.

Senator McGrand: When do they say, "Please don't legalize it"?

Mrs. Haley: They state this when they are heavily addicted usually and they are in criminal activity. They have police after them, they have the drug scene people after them, what we call the heavies, who come over and beat the living tar out of these kids, threaten them with guns, knives, you name it. You would be very shocked at the number of kids carrying guns and knives at the present moment.

Senator McGrand: It is the peers who are the pushers, who want them in the drug business. Is that it?

Mrs. Haley: They have got them in the drug business; they already have them, and these kids are indebted to them.

Senator Fergusson: You mentioned the 13-or 14-year olds who get into the drug habit, and you said that by the time they are 22 they have lost what they should have

learned during that period. What happens to them when they get to be 22? Do they continue to be addicts?

Mrs. Haley: Oh, yes.

Senator Fergusson: All through their lives?

Mrs. Haley: Yes, until they can be detoxified and off the drug thing. Yes, they do continue.

Senator Fergusson: I wonder if they got over this when they get older?

Mrs. Haley: Oh, no. I deal with drug addicts from the age of 13 right through to 50 years old.

Senator Fergusson: You also said that "straight" people are afraid of heroin addicts.

Mrs. Haley: Yes.

Senator Fergusson: Would you elaborate on that a little? Are they violent?

Mrs. Haley: No, they are not.

Senator Fergusson: Then why are people afraid of them?

Mrs. Haley: It is just the way things are. Many people feel, "Drug addict! This is very bad." They do not realize that heroin kids in particular are quite passive. It is the kids who are on speed and LSD, I would say, who are more the ones to fear, because they do get quite muddled up in their thinking and what have you. The heroin kid does too; he doesn't think straight at all, and he is very, very difficult to reason with. You can't talk them out of drugs. There comes a time, I think, when perhaps we do need to have compulsory pick-up.

One 13-year old girl I was dealing with was on heroin, she was pregnant, a prostitute, with parental problems over the whole situation; she was being kicked out of home; the father was demanding an abortion because of the girl's age—which makes sense, in a way. The mother brought the child to me and said, "Is there anything you can do?" First of all, I have got to try to find even a room where I can put this child, where she will be left alone from the heavies, left alone from the general noise, fighting and squabbling and other people in the drug scene. They have to be isolated from it and left alone, I would say, for anywhere from 30 to 90 days. After that period they can start thinking about what has happened to their lives and what to do about their lives. Then we can come in immediately, perhaps a little before then, but not too heavily at first. After the detoxification, come in with long-term rehabilitation programs. It should be designed according to the individual child or adult. I call them "children" because of their lack of development.

Senator Fergusson: You have told us several times that they are brought to you or they come to you. Would you tell us something about your position? Why do they come to you? How do they know about you? All we know is that you represent a parents' group. Is it an organized group? Do you have a position? Why do they bring the children to you?

Mrs. Haley: I am the president of it, but even before that they would 'phone me before they went to prison. I will go down with them to court, or when they first get into trouble, or if they are going to suicide it. I had one last week who phoned up and said, "Thank you very much." He

had really shot himself up with a terrific overdose and it took two hours. We found the boy; he was barely alive; we got him up, got him going. If we get the drug addicts to the emergency ward they will not keep them in there; they will treat them for a little while and turn them loose on the street.

Senator Fergusson: How do they know to come to you?

Mrs. Antrobus: The grapevine.

Mrs. Haley: Yes, the grapevine. From prisons, everywhere, I don't know why, they trust me; they open up, so it puts me in a position—although I don't mind at all—where I find out a great deal of information.

Senator Fergusson: You must give a tremendous amount of your time to this.

Mrs. Haley: Oh yes, I do. They are awfully good. They all state, "Please, just be there; just be there so we can talk." They want to talk very much, but they will talk to very few people, and they will open up completely to very few people.

Senator Asselin: Mrs. Haley, you seem to be very opposed to criminal records for youngsters convicted of simple possession of marihuana and hashish. Would you elaborate a little about the criminal records? Do you have any problems with the kids when they get out of jail and have criminal records? What are their reactions?

Mrs. Haley: When they come out of prison?

Senator Asselin: Yes.

The Chairman: With the criminal record that they then have.

Mrs. Haley: They have a drug record, they have a criminal record. When you take them around with those two records and try to get them a job it is almost impossible. We are trying to educate the unions and so on to look at this. If these people are dry and straightened out for heaven's sake give them a chance to prove themselves. If they slip, all right, then back they go for treatment again. We personally feel something along the Japanese system adjusted to our society is what is required. When they slip, or feel they are going to slip, let there be somewhere they can go right back to. They are ashamed of their record. If they are kicked out of home and there is no parent or family of any sort to back them up and help them, give them a helping hand. We all need help at one time or another, and they particularly need it. This is what they lack so much. They have no confidence whatsoever at first. You have to build up that confidence level so that they feel they are worth something and they can make it, that they can contribute to society, regardless of what their past is; leave it in the past and march on.

Senator Asselin: Have you studied Bill S-19?

Mrs. Haley: No, I am sorry, I haven't.

Senator Asselin: Do you know that under this bill the penalties will be diminished, but youngsters convicted of simple possession will still have a criminal record?

Mrs. Haley: Yes.

Senator Asselin: You know that?

Mrs. Haley: Yes.

Senator Asselin: Do you favour that part of the bill, or would you contest it?

Mrs. Haley: Even this we have been talking about. Personally, we feel perhaps it should be on record, but maybe decriminalize it. Don't legalize, but decriminalize the whole situation. It does not quite make sense, I realize, but the thing is, all right, they have pulled a "boo-boo". They have gotten into something that is not legitimate. I do not think that this should be held against them as teenagers, that they should have a criminal record because of this, when maybe all they have done is use marihuana and have not gone onto the harder drugs.

Senator Asselin: Would you recommend that somebody who has been convicted of a first offence for simple possession should have no criminal record?

Mrs. Haley: Perhaps they should, but I think then, after a period of time, they should be given a severe warning and perhaps be put on probation and also on programs they have to attend in order to make sure they are going to be steered in other directions. Then, if they can stay clean for three to five years, say, and stay away from the drug scene, I think that the criminal record should be completely removed. I do not think that they should go through life with a criminal record at all, particularly kids.

Senator Asselin: You talked to us about rehabilitation. You said that in your province there is no good system of rehabilitation. Do you have any idea or suggestion to offer us along the lines of establishing a rehabilitation system for youngsters who have been convicted of possession of marihuana or have been convicted of trafficking?

Mrs. Haley: Particularly with the hard-core kids now, we feel that it would be a good idea if we had something along the lines of the Japanese system, where they are put into detoxification centres and are detoxified. After that, the community, including both professionals and lay people, are brought into the picture. This includes families and the whole bit. They would be brought in then, in various, different stages for the rehabilitation over a long period of time—2 to 3 years, maybe. At first they are isolated. We start with this, and then all the different people in society work under the one umbrella in order to try to rehabilitate them, using, you know, the various things according to the individual child as well—or adult, if you want to include them.

I do feel that this is the only way it can be done, and you have to have everyone working towards it. The Department of Labour, for instance, could make more room for a kid who is dried out and is trying to make it. If they are doing the job well and keeping themselves straight, I think they should be given every opportunity and the necessary backup from every source possible.

Senator Neiman: I think we are confusing the issue to some extent. You are talking again about the genuine heroin addict, are you not? You are talking about the more serious addictive types. But we are trying to focus, as you know, on the marihuana problem and on the question of criminal records. We are not focusing on heroin addicts. We want to stay with the marihuana problem, if possible, Mrs. Haley, and get your ideas about marihuana in particular.

Mrs. Haley: With respect to marihuana, personally, we as parents say, "Don't legalize it." Also, all the hard-core kids

state, "Don't legalize it, we never thought we would end up where we are today." And they all started on pot.

So from that point of view I would say, don't legalize it until further research is done; that there just has not been enough research whatsoever.

Senator Prowse: Mrs. Haley, if I follow you correctly, you say that the first thing which must be done is to isolate the user for probably 30 days, would that be correct?

Mrs. Haley: Yes.

Senator Prowse: And then you would follow that by probation or by the Japanese system, which, I gather, is a form of group therapy in which people besides addicts take part. The whole community comes in with different representations. Is this correct?

Mrs. Haley: I am not quite sure, but that is where there is compulsory pickup. The minute it is known that they are on drugs, they are picked up, whether they like it or not, and put in detoxification centres first. Then, after 30 days, they come out. If they stay straight, fine. If they don't, back in they go, and that is all there is to it.

Senator Prowse: They are put back into the detoxification centre?

Mrs. Haley: Yes.

Senator Prowse: Are they still kept in an area where they are surrounded by people who can, they feel, understand their problems and will try to help them? Is this correct? This is what you mean by this supportive system.

Mrs. Haley: Yes.

Senator Prowse: Have you had experience with the probation out there? You have mentioned probation. What kind of follow-up are the probation officers or the parole officers able to give at the present time?

Mrs. Haley: Oh, boy. Well, so far, very little, really, because they, too, do not have the facilities. They, too, do not understand the problem. There are also not enough probation officers. They have too many cases. They see these kids maybe once a week, or once every two weeks.

Senator Prowse: Do they see them only during office hours or do they see them at any time of the night or day?

Mrs. Haley: They see them mainly during office hours. The kids have some pet names for them. You know, they call them various names because they feel that they just don't know the problem or the scene whatsoever. Also, too, we do have a complaint as parents and so do the kids who have been convicted with regard to POs and the pre-sentence reports.

Senator Prowse: What are "POs"?

Mrs. Haley: Probation officers.

Senator Prowse: Oh, yes.

Mrs. Haley: Sorry. They make up their reports without consultation with other people, you know. Usually the parents are involved, but sometimes they are not. A parent is allowed to read that pre-sentence report maybe 15 minutes before court time. I know myself that in two cases now I have read the pre-sentence report and I was utterly shocked at what was in that report.

Senator Prowse: Why were you shocked?

Mrs. Haley: Because they were not the true facts whatsoever as to what was really going on at all. This is all the judge has to go on, apart from the witnesses, of course, and the police testimony and the testimony of the one on trial. This really shook us up, you know. There was not a thing we could do about it 15 minutes before court time.

Senator Prowse: Does this happen, in your opinion, because there is a complete overload on the probation officers so that they are unable to do the job or because they just don't give a damn?

Mrs. Haley: Both.

Senator Prowse: In other words, they are "conning" the court.

Mrs. Haley: I would not say they are "conning" it, but I don't think they are properly doing their job. I think they could improve their methods a great deal, by getting, say, the family together or whoever all is involved—by getting them all together and then making their reports up, rather than just taking it from the criminal. Usually, if it is a drug kid, he can't even remember half the time just what all has gone on in the past few years, you know. Also, the parents' side should go into it and maybe the physician's side and the lawyer's point of view, and all these various things should go into it. It should not just be one report made out by a probation officer.

Senator Prowse: Who may be overworked.

Mrs. Haley: Yes. And the judge reads that, and that is all that the judge has to go on. There may go 3 months to 10 years out of a kid's life on such flimsy, sometimes made-up, evidence.

Senator Prowse: The businessmen you were talking about, are these businessmen people who are using these kids to bring drugs to them for their own use?

Mrs. Haley: Oh, no.

Senator Prowse: Or for sale?

Mrs. Haley: For sale.

Senator Prowse: In other words, it is the people behind the pushers, the real traffickers, who are using these kids as their runners, you might say.

Mrs. Haley: Well, yes. You can't call them traffickers, because, you see, all they are doing is lending money. It is not against the law to lend the money.

Senator Prowse: How do they get the money back?

Mrs. Haley: They get it back. They use their "heavies" to get the money back.

Senator Prowse: In other words, this is loan sharking.

Mrs. Haley: Yes.

Senator Prowse: To take advantage of them.

Mrs. Haley: Yes.

Senator Prowse: And are these people known to the police?

Mrs. Haley: Some of them are, but very few.

Senator Prowse: Are the police able to do anything?

Mrs. Haley: No, because there again, you see, it is not against the law to lend money. I myself have gone down to where the kids will take goods—to a pawnbroker. Now, these are hot goods, and we have gone to the police and said, "Look, we know exactly where that was ripped off." It could have been our own homes. I went to a pawnbroker, and he just looked me up and down. The thing in question that was in there—it was a gun—was valued at over \$140. This kid was given \$20 by that pawnbroker for the gun. We went in four days later to claim that gun. We also advised the pawnbroker that it was stolen, that it was hot goods. He knew that the kid was a user, and he charged a dollar a day interest. We had to pay \$24, four days later, to get that gun out. We cannot go to the police, you see.

Senator Prowse: Why can you not go the police?

Mrs. Haley: Well, because then we have to charge our own children with theft, and you know, when we have a sick kid—we recognize him as sick—we are not going to turn that sick kid in.

Mrs. Antrobus: If there was a proper treatment centre they would be turned in.

Senator Prowse: How many people are there in your group, and how many groups are there like yours?

Mrs. Haley: Right now I have letters—and two or three years ago I had letters come in from all over the province, and even from back east here—asking us please to come and show them how to set up the same type of group, and show them how to get things going, and this sort of thing. In our group, for example, we will call a public meeting and we will have over 600 people, easily. We also have the back-up of the RCMP behind us all the way, and also of judges, lawyers and doctors. We really attack, in a nice sort of way, each one of the professions for sitting on their behinds and doing nothing about the problem. They have all collected money, and no service has been rendered. They knew the problem, and they knew they had no facilities, but not once did they speak out and say that they did not have the facilities. Why did they not go to top government?

Senator Prowse: Were there no facilities in British Columbia at all for a person like this, except to put them into a mental institution?

Mrs. Haley: Not proper facilities.

Senator Prowse: Is there anything besides the mental institutions there, like detox centres?

Mrs. Haley: Well, the drug and alcohol commission have just now opened a house that will take in up to 34—in a while—kids, at a maximum. I could fill that place in a day. They will keep them there for six days, or a little longer, if necessary, and then they are back out on the street. These kids are also allowed to have visitors in there, and they are also in there with alcoholics. Personally I would resent that, and as a parent I would not allow my child, if he was 13 years old and on heroin, to go in with a 50 year-old alcoholic and call that constructive rehabilitation.

Senator Prowse: Well, there is no way you are going to be able to do anything constructive during that period. All you can do is try to dry them out, or detox them, and then it is a long, slow process from then on.

Mrs. Haley: Yes. Drug people and alcoholics, basically, do not mix; they do not even like each other. Your heroin

population, in particular, take care of their own, even in prison. They are a group unto themselves. The kids out on the street, when they are "OD"-ing, getting hot caps, and this sort of thing, know that if they are really close to death the others will whip them into hospital and then run right away. They will drop them off and then run. The kids are kept there for a while and then, as I say, turned out into the street. Or, on the other hand, the heroin addicts have learned themselves how to treat an overdose, and they will put them in cold baths and everything. That boy that phoned here, just a week ago, was really shot up—the suicide note was in his pocket—and it was all because the boy came out of prison just recently. He tried to get a job, but could not get a job because of his record and his problems. The unemployment situation throughout Canada is bad anyway, quite apart from someone like this, with this type of record. This boy went back on to the drug scene. Their so-called friends will say, "Well, here's a cap free," and, bang, usually most of them, within about three weeks to a month, are all back on the drug scene again. I do not think there has been one who has been through the penal system who has been rehabilitated at all.

Mrs. Antrobus: My son has.

Mrs. Haley: Sorry. But that was through your efforts, and the efforts of many others.

The Chairman: Senator Godfrey.

Senator Godfrey: We have had some evidence, I think, from one witness, who said that in all of the cases he knew of marihuana users started with alcohol; they started drinking and then went to marihuana. I do not know whether he was referring to older people or not. What is your experience of the relationship between alcohol and marihuana at the age level you are talking about?

Mrs. Haley: Well, right now, many, many kids are going very heavily on to alcohol. That seems to be what they are switching to now.

The Chairman: You mean they have dropped marihuana and they are going into alcohol? Or are they taking both?

Mrs. Haley: Well, both. And many, many kids are drinking very heavily now.

Senator Godfrey: You are talking about 13 year-olds, fourteen year-olds—the same group?

Mrs. Haley: Yes. In Victoria—staid little old Victoria—there are kids in the pubs aged 14, 15, 16. You see, since they brought that age level down from 21 to 19, it is very difficult for, say, a bartender, to tell the difference between a 17 year-old and a 19 year-old; but you can certainly tell the difference between a 17 year-old and a 21 year-old. You see, we have made it rather difficult for them by dropping that age level, and we can drop it down to 13 if we want, in order to try to pretend we are solving the problem, as we can do with marihuana or anything else. We can just legalize everything, and we have no problems; but, of course, that is not curing the problem at all.

Senator Godfrey: Do you find that people who are drinking, then, tend to end up the evening by smoking a joint? We have had some evidence to that effect. They start the evening with alcohol and then, later in the evening, out comes the marihuana. In fact, one man seemed to think that that was normal.

Mrs. Haley: That more or less is normal; but also, many of them will take, say, MDA first, and then take a bottle of beer or two to hide the fact that they are on drugs. Then the parents say, "Thank God they are only drinking!"

Senator Godfrey: One other question. We have had some evidence from the Mounted Police that they thought policemen who were arresting people for possession probably exercised discretion and only laid charges in about one-third to one-quarter of the cases where they actually caught someone in possession. What is your experience of that?

Mrs. Haley: Yes. I have found that. I have found that even with my own son when he first started. We were called to the police station and advised that he had been caught with marihuana, and what-have-you. Even in the cases of the hard stuff, many times the police do know, but they say the same thing. "Well, look, all we can do is bring them in here and lay charges against them. We know they need more than that, however." The police, too, are getting fed up with going around and around the way these kids are going. In the end the kids have the police after them, the heavies are after them, usually the parents are down their necks, and by the time they have hit heroin they have usually dropped out of school. They usually drop out after they start the chemicals, immediately after the marihuana; but they have definitely lost interest in school work, et cetera, and their grades drop while they are using marihuana. Without exception, every one of us has found this, and they were very cranky to deal with.

Senator Godfrey: How do you find the police exercise this discretion as to when to lay charges and when not to lay charges? Is it a case of when they find that somebody is an habitual or something like that?

Mrs. Haley: More or less. I think they keep an eye on the whole situation and they ask the parents to do the same thing, more or less. Then they wait, and if they can they will advise the parents. Some of them are extremely good. But then too we have police brutality, and we are much against it, but we realize that some of it has to be because they are trying to begin to find out who the bigger ones are. So, as I say, we realize it has to be, and we do not want to interfere with the police work; but we must realize that these kids are sick and they have to be treated, so why not get them to the detox centres and it does not matter whether we pick them up or get anybody in society to pick them up, but for God's sake get the facilities to pick them up and get them in for treatment before it is too late.

Senator Langlois: I have been very much impressed by your evidence this morning, Mrs. Haley, and I congratulate you on the good work you seem to be performing for the drug addicts in your province. Could you tell us if there is any educational program in force in your public schools at present, either sponsored by the Department of Education or by school boards, aimed at warning school children about the ill-effects of marihuana and other drugs?

Mrs. Haley: Yes, as a matter of fact in Victoria the Saanich Police Department has a program of drug education, and some of the policemen go right into the schools and try to educate the children as to the dangers. They show them samples of various drugs and show them what can happen with them. They are doing good work. They also go in there with movies. How much it is working I do not really know, but they do have this program. In fact, two of the policemen wanted to come with me today, but

because of financial difficulties we were unable to arrange this. But what we are trying to do now is to close the gap and co-ordinate the efforts of the police, the parents, the kids themselves and the schools—the whole bit, you see.

Senator Langlois: Would you please tell us whether or not tests have been carried out or if surveys have been made among the population generally, among the children attending school, for example, in order to establish the degree of ill-effects of drugs, such as loss of memory, a drop in school attendance or a drop in performance in the schools? Do you know if surveys of that kind have been carried out in your province?

Mrs. Haley: Very little, if any. They did make one, that I told you about, a few years ago when the school board came out with the report that the problem was decreasing. But now they are realizing that the problem is not decreasing at all. Even before I left Victoria I checked with each of the police chiefs and they all agreed with me completely that the problem is not decreasing in any way whatever. Right now, as far as I am concerned, there is just a sort of a lull, these people who are higher up in the drug scene are not stupid people; they know how to work psychologically on these kids and every so often they come in with the bit,—“Oh, marihuana is going up in price!”—or, not so much marihuana but the other drugs, particularly that heroin is going up in price, and this panics anyone who is using it. The same thing applies to the heavy users of marihuana.

Mrs. Antrobus: Special education is also worried now about the kids who are using marihuana.

Senator Langlois: If I understood your evidence correctly this morning, you have told us that it was difficult to get proper treatment in your province. I know there was an act passed in 1973, the Drug Addiction Rehabilitation Act, which provided for the establishment of clinics and homes for the treatment of drug addicts. Is this act now in operation?

Mrs. Haley: No, not at all. The Attorney General's department is also working on one similar to this, and Dr. Scott Wallace, our MLA and spokesman for our group, has worked with us and the addicts and this is what we came up with. The police also think that this is what is required because these youngsters have to be isolated for a while and physically built up, and then on to these various things.

Senator Langlois: You have also told us this morning that it is easy enough to get drugs in the street.

Mrs. Haley: Oh, there is no problem at all.

Senator Langlois: Would you go so far as to say that the police have lost control of the situation?

Mrs. Haley: Yes. They have stated years ago that they cannot cope with the situation alone. They have to have the parents and everyone else behind them. They cannot do the job for us. We have to get in there and do our bit.

Senator Langlois: Again I congratulate you on the excellent work you are doing. Thank you.

Senator Quart: Mrs. Haley, I want to follow a question asked by Senator Prowse earlier regarding your organization. We have now received this copy of your brief which is very badly done so far as the xeroxing is concerned. So far as your work is concerned, I am very much impressed as a

parent, grandparent and great-grandparent. You have mentioned that you were very much concerned, and I suppose it was the fact of your son being involved that started you off on this wonderful work you are doing. Now I see that your brief is submitted by the Canadian Concerned Citizens Association which brings me to the point of asking if there are many men in your group.

Mrs. Haley: That is one of the things that we have noticed more and more. Men are now beginning to realize the problem and the seriousness of it. At first there were very few men involved and very few fathers were concerned. You know, with most fathers, when the children are small, they just come in and yell, and that is that. But with drugs, that does not work.

Senator Quart: So now you are having more men in your organization?

Mrs. Haley: Yes.

Senator Quart: After the spadework being done by the women, they will now come in and take the glory!

Mrs. Haley: We are the ones who tempted them out of Eden, but they are the ones who followed us.

Senator Quart: Do you have contacts with any other similar group in any of the other provinces in Canada?

Mrs. Haley: No, we have not.

Senator Quart: Have you ever tried to establish some?

Mrs. Haley: Not yet. Basically, we are a group of parents working on our own.

Senator Quart: And you have never heard of any other parents' group working in any other province? I think it would be perfectly marvellous if you could make contact and if your association became a national organization because it would then have a lot of clout.

Mrs. Haley: We certainly would, and even with regard to other countries as well. I have UN reports to the effect that juvenile delinquency crime rates are increasing in such alarming proportions, and not just because of drugs, but because of our total apathy and permissiveness. Right now people are becoming quite apathetic to the idea that we have a marihuana problem. They accept this idea and the idea that, yes, we have a pot problem. You know, “Okay, so we have got it. So what?” That is about all that is done about it. The more they hear about it, it seems, the more apathetic they will be and it will become just a part of our life. In my opinion, this attitude should be stopped and stopped right away, quickly.

Senator Quart: I really believe that you should extend your efforts to other provinces and, either through a national organization or other means, send and S.O.S. to publicize the situation so that others, primarily parents, would become so concerned as to form similar groups.

You do not have to answer this question if you do not wish to do so. I presume you are a volunteer group, but you are devoting a tremendous amount of time, effort and dedication to this problem. How do you manage to fund it? Is it by way of donations?

Mrs. Haley: No, we have no funding whatsoever. If we wish to extend and develop further this will be a requirement, whether it is provincial, federal or world funding. I myself was going to back off, but the kids, whether soft or

hard drug users, and the parents have all asked me to please not quit, so I am still with it.

Senator Quart: Certain service clubs, such as the Kiwanis, with which I am familiar, do carry on a tremendous amount of work for young people. You could probably get in touch with them and find out if they would back you in the way of funds, because money makes the wheels go around everywhere.

Mrs. Haley: Oh, yes, that is quite true. I have contacts here, there and everywhere, even in the criminal world, who give me information.

Senator Quart: You should get a percentage from the pushers! However, that is a very ridiculous comment to make. But please do carry on.

Senator Fergusson: Would you tell me if there are as many female drug addicts as men, or girls as boys?

Mrs. Haley: There are a tremendous number of young girls. However, I would say there are not quite as many as there were previously. As a matter of fact, when we began, a girl with a small child was threatened right in front of that little child with a knife at her throat by the heavies from Vancouver. They come over to Victoria and collect their money. They make the kids lie down on the floor and walk around them and so on. This is absolutely petrifying to these kids. The girl I am speaking of is not a kid, but 22 years of age, although I continue to call her a kid. She telephoned me in utter panic at 1.30 in the morning telling me these heavies were looking for her husband to kill him. There were contracts out for him. There are kids right now in Vancouver and Victoria with contracts out against them. These heavies can hire someone for \$250 to wipe out one of these young kids. My own son has experience with some of the heavies set, with whom I have personally dealt. I have warned him severely that if they want to try it they will go through me before they get to him. This is scary talk, but they do respect it if someone stands up to them. They are also a little afraid.

Senator Fergusson: And these young drug addicts do not dare to stand up to them?

Mrs. Haley: No, they cannot. They are taken out and some of them are very badly beaten. They are threatened, and while I do not mean to attack the police in any way here, some of them are worked over pretty good when they are taken in. I feel that if four big, healthy policemen can pound around a kid who is sick and defenceless it is not a good situation, nor does it produce a good relationship or encouragement for co-operation.

Senator McGrand: What percentage of parents whose children are on drugs are involved, interested or helpful to you? Is it 25, 10, 5 per cent?

Mrs. Haley: I would say most; I just have to open my mouth and many, many people come right in behind me.

Senator McGrand: Would you get 50 per cent of the parents to support you?

Mrs. Haley: Oh, more than that—100 per cent.

Senator McGrand: Then I wonder why your campaign is so unsuccessful, if you have the co-operation of all the parents.

Mrs. Antrobus: Professionals must help in dealing with drugs. What can a parent do with a drug addict?

Senator McGrand: Then where is your rehabilitation?

Mrs. Haley: This is why we have appealed to the medical associations and law societies. We will appeal anywhere. The facilities must be provided for the parents, the police and the addicts, wherever we can put them. We do not mind where they are, but they must be provided as a starting point from which to work. The system must also be left flexible so that if mistakes are made and some aspects do not work they can be changed.

Senator McGrand: You say they treated them with drugs. It is rather ridiculous to treat a drug addict with drugs.

Mrs. Haley: Right.

Senator McGrand: But that is all that is being done at the present time?

Mrs. Haley: Well, right now if a kid goes into an institution for 30 to 90 days, after a certain length of time, for instance 30 days, he can sign himself out. Now, this is ridiculous, because that child has not been rehabilitated or treated. I know of one right now who signed himself out and two weeks later I talked him into signing himself back in. He was nowhere ready to hit the street.

Senator Asselin: Do you think the bill which is under consideration will help your situation in British Columbia?

Mrs. Haley: Well, you see, I have not read it.

The Chairman: Let me put a specific question. You told us that you are not familiar with the details of this bill.

Mrs. Haley: No.

The Chairman: For simple possession the present penalty for a first offence is a fine of up to \$1,000, or imprisonment for six months, or both. This bill proposes a fine up to \$500, or imprisonment for up to three months, but only in default of payment of the fine. On the basis of your experience, do you favour such a provision?

Senator Asselin: Or should the law be more severe?

The Chairman: Or should the law be made more severe than it is now?

Mrs. Haley: No, I do not think that in this case it should be made more severe, as that would only make a criminal out of the child.

The Chairman: So you favour a reduction in the penalty for simple possession, for first offences?

Mrs. Haley: Yes, but with restrictions to it. If the kid has been caught, there should be restrictions. Yes, there should be rehabilitation programs. We have to figure out what would be best. This is where your professional comes in.

Senator Prowse: With professional follow-up help. He could be fined, and then the other process takes over.

Mrs. Haley: Yes, immediately.

Senator Neiman: We are talking about marihuana. Are you going to turn the whole school into a rehabilitation centre? You say the children are so clever and can do things. What kind of program can anyone devise that we would be certain could do the job? We are talking only about marihuana. You are talking about the very large number of drug users as a whole. Do you think that this is

really a practical proposal, that when he or she is caught he or she must attend a program for three or five years? You may have been thinking of the hard stuff.

Mrs. Haley: Yes.

Senator Neiman: I cannot see that we can find a practical application when you are talking about the numbers to which you are referring. We are trying to find out what you think, in your experience, is the best way to deal with the young offenders, young users, of marihuana and hashish. That is all this bill deals with. We want to know what you think is the best way of handling that group—marihuana and hashish users.

Mrs. Haley: Okay. I think we should decriminalize it, but not legalize it. Also, there should be programs set up—

Senator Neiman: Information programs?

Mrs. Haley: Yes, information programs, and also programs that they could attend and develop other interests, to get them off on to other things.

Mrs. Antrobus: There should be much more research done into marihuana.

Mrs. Haley: Yes, much more research should be done.

Senator McGrand: You said your son was rehabilitated?

Mrs. Antrobus: It was my son.

Senator McGrand: How was it done, and who did it?

Mrs. Antrobus: We did; I did.

Senator McGrand: I had already said that the home was the place to do it.

Mrs. Antrobus: We were just lucky.

Mrs. Haley: It took many years.

Mrs. Antrobus: Also there was an underlying medical cause where my son was concerned. A lot of kids, young men and women, who are into drugs do have an underlying medical problem. That is why they go into drugs to begin with. They are self-medicating themselves.

The Chairman: Mrs. Haley, what do you mean by "decriminalization"? You are not the first who has used that term.

Mrs. Haley: I do not feel that it should be permanently, for a lifetime, on one's criminal record, that the kid should have to carry it for the rest of his life, or that the penalty should be so severe, perhaps. We have discussed this ourselves—

Senator Asselin: You mean for simple possession?

Mrs. Haley: That is right.

Senator Prowse: Do you feel that just fining rather than a prison sentence would be all that should be done, and, if possible, that should be followed by some kind of supervision, such as probation? You would not consider that to be criminalizing a person?

Mrs. Haley: No.

Senator Prowse: That after a period of good behaviour there should be the opportunity of having it struck off his record?

Mrs. Haley: Yes, after a period of time.

The Chairman: By "decriminalization," you do not want him to have a permanent criminal record. Is that what you are saying?

Mrs. Haley: Yes. I do not think it is fair that someone makes a mistake at the age of 13, and 15 years later, after he has made another mistake, out comes the whole record of every bad act he has done and there is no mention of any good act.

Senator Langlois: Mr. Chairman, are we going to meet at 2 p.m.?

The Chairman: Yes.

Senator Langlois: Will the witnesses be present this afternoon?

The Chairman: There is another witness who will be appearing this afternoon. He was to appear before us this morning. Since there are a number of questions still to be asked, perhaps the witnesses can return this afternoon. It is up to the committee. Dr. Klonoff, are you able to be present this afternoon?

Dr. Klonoff: Yes, Mr. Chairman.

The Chairman: Mrs. Haley, can you return this afternoon?

Mrs. Haley: Yes.

The Chairman: The Committee will now adjourn until 2 p.m.

The committee adjourned.

—The committee resumed at 2 p.m.

The Chairman: Senator Heath and Senator Langlois, I understand, still have some questions for Mrs. Haley.

Senator Heath: There is provision in Bill S-19 for the reduction of sentences for simple possession of marihuana. However, as you pointed out earlier, as have other witnesses, some people are trafficking in both marihuana and harder drugs, such as opium. The police are aware of these individuals, but there is no possibility of obtaining sufficient evidence to get a conviction on the more serious charges. There are cases, however, where the police can obtain sufficient evidence to charge traffickers in hard drugs with simple possession of marihuana, thereby giving the opportunity to get them off the street for the maximum period of time. Under Bill S-19 it is proposed that the maximum be half the present length of time if a fine is not payable.

I am wondering whether, in your opinion, we are cutting off a much needed avenue which allows the authorities to get these heavies, as we call them, off the streets. The provision in Bill S-19 will remove that discretion entirely.

Mrs. Haley: There is that possibility, senator. Unless these people actually have the drug physically on them, there is just no way the police can get a conviction. Many of us parents know big pushers, but, again, we cannot get them unless we can get the police to be right there when they have it on them. We know exactly when the transactions are going to take place, as do the police on numerous occasions, but it is extremely difficult to obtain the necessary evidence. If we are going to be lenient on the younger kids who have a few joints, what do we do about the big

pushers? How can we get two sets of laws in this respect? Each case is so darned different. I am not really answering your question at all.

Senator Heath: I think you are developing it. Following from that, would you be satisfied, if the possibility range of sentences were greatly broadened so that the prosecutor and judge could take into account whether it is simply a 13-year old first time user or it is a trafficker in hard drugs against whom they can only get evidence of possession of pot for which the maximum sentence could be imposed? That is a discretion which, from what you have told us, the judiciary should have.

Senator Prowse: It is not that easy.

Senator Neiman: I think you would have the civil liberties people down your neck.

Mrs. Haley: I understand completely what you are talking about, senator. The importers of pounds and pounds of heroin and other hard drugs are getting off scott free. We know this is going on. They are bringing the stuff into the country and selling it in \$5, \$10, \$20 baggies to kids who, in turn, sell it, and those are the kids who are going to prison. The people who are importing it are getting off scott free. We have to crack down on those who are importing these drugs into the country.

Senator Langlois: Mr. Chairman, this morning Mrs. Haley told us that she was not totally familiar with Bill S-19, and following that statement by her you asked her whether she would be satisfied with the fine provided for on first conviction under Bill S-19, which is a maximum fine up to \$500. I am wondering whether the witness grasped the meaning of "maximum sentence." In reply to your question she said she would prefer to see the accused sent to a rehabilitation centre. That is impossible under Bill S-19. If the addict is ready to go to a rehabilitation centre, the judge could either reduce the fine to a bare minimum or give him a suspended sentence. Would you be satisfied with that, Mrs. Haley?

Mrs. Haley: Yes, if the accused were put on suspended sentence or probation, one of the conditions being that he or she must take advantage of other forms of rehabilitation.

Senator Asselin: But a suspended sentence would mean that the individual involved would have a criminal record.

Senator Langlois: Following from that, would it meet with your approval if the interpretation of Bill S-19 was that the judge had the discretion to reduce the fine provided the accused was willing to enter into a rehabilitation program, or even to allow for a suspended sentence, if he so chose? The presiding judge would have quite a broad discretion to exercise in this respect which would enable him to take care of any particular cases which come before him, taking into account the fact that the accused is willing to enter into a rehabilitation centre or clinic?

With regard to the point raised by Senator Asselin regarding the criminal record, one of the recommendations of the Canadian Medical Association before this committee was that the criminal record either be not established or, failing that, that the Senate or the House of Commons make a provision for the automatic erasure of the criminal record for those who are found guilty of simple possession for personal use after a two or three year charge-free probationary period. Which would you prefer? Would you

prefer the non-establishment of a criminal record or the establishment of a record for a period of two or three years after which, if there were no charges laid against the accused in question, the record would be automatically erased?

Senator Prowse: Could be erased.

Mrs. Haley: Charge him, and if he has kept clean and remained in the rehabilitation program for three years, erase it right there and then. I think you should have both.

Senator Langlois: But this committee will have a choice to make, that being whether the record should be established or whether there should be a record at all. If the record is established, after a probationary period of three years charge-free, the record will then be erased. Which of those would you prefer? Perhaps I can formulate my question in a different way. Do you not think that having the record established, with a probationary period for three years, would be a good incentive for the individual? He says, "I have a record now. If I keep out of it for 3 years, my record is going to disappear." This would be an incentive, to my mind. Would you agree with that?

Mrs. Haley: Yes, I would.

Senator Langlois: In that sense this might be the best method for us to adopt, if we come to the conclusion that we should give way to the recommendations of the Canadian Medical Association. In other words, the recommendation of the Canadian Medical Association is twofold: first, they recommend the non-establishment of a court record for simple possession; failing that, they recommend that the Senate and House of Commons amend the bill in order to provide for the erasure or destruction of the criminal record if the convicted person has no further conviction for a period of 3 years. Which of those do you prefer?

Mrs. Haley: I think the second part.

Senator Langlois: Very good. Thank you.

The Chairman: Thank you very much, Mrs. Haley and Mrs. Antrobus. I want to tell you that you have been of great help to us. I join with Senator Quart, in particular, in saying to you that we concur in your good work. Thank you kindly.

Honourable senators, our next witness is Dr. Harry Klonoff of the Department of Psychiatry in the University of British Columbia. A summary of Dr. Klonoff's brief is now being distributed. Would you proceed, Dr. Klonoff. Perhaps you could begin by outlining briefly to the committee your qualifications in this particular field?

Professor Harry Klonoff, Department of Psychiatry, University of British Columbia: Thank you, Mr. Chairman. Honourable senators, during the past 5 years or so, a group of investigators at the University of British Columbia has been concerned with the clinical investigation of cannabis, marijuana. We have conducted clinical studies on the acute effects of marijuana. We have conducted studies on the effect of marijuana on driving. We have also conducted a study in terms of some of the effects of the chronic use of marijuana. I did send to the chairman of this committee some of the literature and some of the reports we have accumulated over the years.

The Chairman: I sent those to the clerk of the committee, and each senator was notified that they were available. The documents are here.

Professor Klonoff: What I thought I might do as a starter, then, would be to read a summary statement of the work we have done on cannabis. After that I would be prepared to answer any questions you might have. I am going to restrict myself purely and simply today to cannabis. I am not going to say anything about the opiates, at least not directly. Again, my terms of reference are the bill itself, S-19—as much as I can understand the bill. It might be just as simple if I read the statement. If you would like, just for clarification purposes, you could stop me as I go along, but perhaps you would prefer me to read the whole statement and then ask your questions.

The Chairman: Yes, read the whole thing. We will have it on record and then the questions can be asked.

Professor Klonoff: Drug abuse is neither inevitable nor adaptive. "The potential for harm of non-medical drug use as a whole is such that it must be regarded, on balance, as a phenomenon to be controlled". The second part of that is a quote from the Le Dain Commission report. That statement I would regard as the essential principle which must be borne in mind in terms of the creation of any legislation which is going to deal with drug abuse through cannabis. I would like to emphasize that point about drug abuse or drug use.

Secondly, socially acceptable drugs, such as alcohol and psychotropic drugs—and here in terms of broad categories I define them in terms of major tranquilizers, minor tranquilizers, antidepressants, stimulants, sedatives and hypnotics—are endemic in our society. If any senators would care for some of the studies which are coming out in terms of the endemic use of prescribed drugs in our society, I would be pleased to provide these to you. The adverse effects of alcohol, in social terms, are incalculable. That is a point which is not arguable. The effect of extensive use of psychotropic drugs is to create a "chemical society" or one of "chemical escape".

Less socially accepted drugs, for example, cannabis, are used extensively and are becoming part of the ethos. It is difficult to provide any sort of accurate or reliable figures in terms of cannabis use. It all depends upon whom you ask. Anecdotal reports vary all the way from zero to 100 per cent. One has to define what cannabis use is. An adolescent who is out socially and who has a joint passed to him and who holds it to his mouth and game-plays, may or may not have experimented with cannabis. One has to find out what it means to say, "Cannabis use". The more recent figures from the United States—and these are borne out in Canada—are that somewhere between 40 per cent and 50 per cent of the younger age groups, that is, between 14 and 22 or 23, have experimented with cannabis. But one has to be very cautious in terms of defining what experimentation is.

Notwithstanding the controversy regarding the effects of cannabis, hazards have been identified in the scientific literature, namely, the acute effect on mental processes. We have documented this and it has been documented by other studies in Canada and it certainly has been documented by studies in the United States. Then there is the adverse effects on driving skills. There has been only one published study of the effects of cannabis on driving. This is a study which has emanated from the University of British Columbia. Another study was completed in Ontario. I have the report but it is not in published form and there are no conclusions to be drawn from this study as yet. Then there is the effect on adolescent maturation, and here again this has been documented in a number of

studies. Then we come to a significant factor in multiple-drug use and here we are referring to the fact that there does seem to be a progression in terms of drug usage and the Progression is age related and drug related. It starts with tobacco and then moves on to alcohol, to amphetamines, to tranquilizers, cocaine and heroin. So there does seem to be some sort of a progression. There is no consensus at all that there is any causal relationship necessarily involved here, but on the other hand there is a consensus that there does seem to be a relationship in terms of drug usage. Hence cannabis is implicated in terms of multiple-drug usage.

Potential hazards have always been identified and are mainly the effects on personality and mental health. Secondly, in the literature at the moment there are many reports on cannabis, which has been implicated in terms of chromosomal damage, disruption of cellular metabolism, the creation of hormonal irregularities and the effects on the bronchial tract and lungs, in the same way that such effect would come from the abuse of tobacco. I think one should be cautioned that in this latter area these are tentative reports and the findings are highly conflicting at the moment and will have to be borne out by further investigation.

Then there is the potential hazard of long-term, chronic use, which has yet to be evaluated within a cultural context. There are about three or four studies which have come out in the literature in the last two or three years, two of them from Jamaica. I am not very sure whether those studies which have been done in Jamaica, taking into account the differences in cultural context and the question of methodology, can provide any hard and fast conclusions. The fact remains that at the present time there is no evidence that the long-term effects of cannabis are benign. At the same time, there is no evidence that they are necessarily dangerous.

Senator Fergusson: Would you say then that that study has been discredited? I am speaking now of the Jamaica study.

Professor Klonoff: No, I am not saying that, but I am suggesting that one has to be very cautious in generalizing from the work done in Jamaica or Egypt or the middle-eastern countries, because of cultural differences which may or may not be generalizable. Beyond that one would have to examine the methodology of the studies very, very critically before accepting the conclusions. But the use of cannabis is of such scope, and the means of control so inefficient and probably unjust, that legislative action is timely and necessary.

The issue of personal freedom versus legal coercion can be reconciled. And here we get into the question again in terms of personal freedom and societal control or governmental intervention. I would hope that one could place this in some sort of context, and not get involved in a debate *ad infinitum* as to whether it is one or the other. In actual fact, it is not one or the other; it is a matter of reconciling and counter-balancing these two points of view. Perhaps today in the public's view the real issue about cannabis is not as to whether or not the drug causes damage but rather as to whether its use has spread so widely that, like alcohol, the social costs of efforts to prohibit its use exceed the physical risk of its use.

Legislative action should accordingly reflect the social concerns of the minority—the users—but also the social concerns of the majority—the non-users. Here it should be

emphasized that regardless of anecdotal reports about everybody using it, the fact is that everybody is not using it. The majority are non-users, and one should bear this in mind. So the law should reflect the social concerns of the minority, the users, and also the social concerns of the majority, the non-users, as well as the available body of knowledge regarding cannabis and the long-term effects of legislation. Here again, if you will pardon my venturing into your domain, legislation at times does have a long-term effect which may not necessarily have been intended by the legislators who promulgated the legislation initially. Hence if you take a historical perspective of the legislation this may at times mollify the nature of the legislation that one recommends or enacts. In such legislation the overriding principle that must be constantly kept in the mind of the public is that drug use and abuse is non-adaptive from the point of view of the individual and in terms of the well-being of society.

The initial premise in drug legislation is that this is not a condoning of drug use; the condoning of the drug use must necessarily lead to reinforcement and more use. Legislation is a means of coping with a problem and is not, it is to be hoped, a vehicle for magnifying the problem. With this principle affirmed, the decriminalization of the simple possession of cannabis is a step in the right direction—and my definition of decriminalization is what is stated in Bill S-19, namely, that the control of or penalties for the use of cannabis should move from the Narcotic Control Act to the Food and Drugs Act. I am using this as my operational definition of decriminalization. As I say, this is a step in the right direction, but only if the legal constraints regarding the distribution—the illicit distribution—are tightened and enforced. I emphasize the initial principle that if the premise one is working on is that drug abuse should be curbed and curtailed, then the issue of distribution is something that one must address oneself to. Furthermore, the constraints and penalties for driving under the influence of cannabis must be modeled on the penalties that currently obtain for alcohol and driving.

I recognize that the moment one gets into the whole business of driving, it is very complicated, because, if my memory serves me correctly, penalties for driving use the generic term "drug", and alcohol is a drug and would come within the terms of reference of penalties vis-à-vis driving. So would cannabis; but it is unclear. Whether there should be clarification of the statement or redefinition, I am not very sure. All I am recommending is that the constraints and penalties for driving under the influence of cannabis should be taken into account in terms of any legislation dealing with marihuana.

It does not necessarily follow from decriminalization that government should or must assume responsibility for providing cannabis on demand, as such legislative action would contravene the principle that drug use and abuse is mal-adaptive. Such a step is premature and, in my opinion, unwarranted at this time. This is one of the major conundrums or potential illogicalities in terms of trying to evolve a more sensible way, both legislatively and socially, of dealing with cannabis. If one agrees that there should be decriminalization, there is the problem of providing the agent. My reading of the bill at the moment—I could be totally wrong—is that there is potential in that bill for the government to get involved in providing ways and means of distribution. If one takes that path, it is diametrically opposed to the principle that we should be concerned about decreasing drug usage, not increasing it. How one copes with this is something to which I do not have any answers.

More information regarding the varying ramifications of cannabis use is necessary. A concerted effort should accordingly be made to encourage and fund such research.

Drug education has to date proven to be anything but successful, in terms of deterring use, but models of education should be explored and a realistic education program implemented. If you review the literature, and if you are cynically inclined, it would seem that most drug education programs, instead of curbing drug usage, in actual fact may be increasing it; because you are providing information, you are dispelling fears, you are implying that everyone is using it. Hence at times drug education has a diametrically opposite effect to the intention of the educators. That is the sum and substance of what I have to say.

Senator Prowse: Doctor, dealing with the point regarding constraints and penalties, that driving under the influence should be modeled on those that currently obtain for alcohol and driving, you will recall that for years we had the general term "impaired." Then along came the breathalyzer, and we came up with the .08 per cent. Before that it went on physical appearance, smell, and so on. Is there any kind of method by which it is possible to tell whether a person has been using cannabis, if he is caught in a vehicle?

Professor Klonoff: Yes and no. There is nothing, to date so far as I am aware, which is as simple and as readily applied as the breathalyzer test. On the other hand, there are ways and means of detecting the presence of cannabinoids in the body. They are more difficult, more costly than the breathalyzer test. That may be something to which one must address oneself in terms of the whole business of cannabis and driving. In the clinical study which we conducted on the effects of marihuana and driving—I will not say anything about effects, because we did find an effect—in interviewing the subjects who participated in the study, a number of conclusions emerged. The first is that this is a phenomenon which is ongoing. This was not a phenomenon which we created on the streets of Vancouver. A significant number of adolescents are smoking and driving or smoking while driving. This is an ongoing effect.

Secondly, the use of cannabis and driving is not infrequently associated with the use of other drugs and cannabis and driving, or cannabis and alcohol and driving. One can take a look at the available data in terms of fatal traffic accidents, to see the implications of alcohol in this. The statistics vary somewhere between 50 and 50 plus per cent; that is, 50 plus per cent of all fatal automobile accidents are alcohol implicated. There is no question that this is a major area of social concern. I do not think we can say that because we do not have a readily available test this is beyond our means of control. If we do not have a ready test to determine the extent of cannabis, this may be something else which we have to do in terms of our legislative action.

Senator Prowse: At our present state of knowledge, how is it possible to tell how much cannabis a person has in his system? Is it determined by means of a blood test, or a urine test?

Professor Klonoff: I anticipated that question and brought along a number of technical reports in terms of detection of cannabis. If you like, Mr. Chairman, I can deposit the articles and references with your secretary or the reporter. The answer is that there is nothing which approximates the ease of the breathalyzer. This is always one of the problems. If we find a very simple ready way of testing something, from there on in, this becomes our

model in which we like to think, or the model on which we would like legislation. There is nothing that approximates the breathalyzer. On the other hand, there are ways and means of detecting cannabinoids in the body.

Senator Prowse: From the practical point of applying them at the court level, how are we going to get that evidence, bearing in mind the fact that our law has an abhorrence of self-incrimination? Finally, for social reasons, we brought in the .08 legislation involving refusal to accept a very simple test.

Professor Klonoff: As you are probably aware, and if my memory serves me correctly, refusal to take a breathalyzer test is a plea of guilty. Is that not so?

Senator Prowse: No. It carries the same penalty.

Professor Klonoff: It is an offence which carries the same penalty. With respect to your question, I can refer you to the articles in terms of the details. I am not really competent to comment on this. I would prefer, if this is the sort of information you want, that this question be addressed to, say, the Department of National Health in Ottawa, who could provide you with a more precise response to that question. Here one moves into the whole business of chemistry and testing for the presence of cannabinoids in the body.

Senator Neiman: Dr. Klonoff, would you not agree, quite simply, that if you are stoned, you are stoned, and it does not matter whether it is on alcohol or drugs? In either case, there will be certain visible effects plain to anyone, including the police, if the individual in question is stopped for a traffic offence.

Professor Klonoff: Again, I am not terribly sure I can respond to that question with the degree of precision you may be searching for.

Senator Neiman: You are talking to lay people here.

Professor Klonoff: Regardless of whom I am addressing, I try to restrict my remarks to something which has scientific validity rather than my own personal experiences of yesterday, or something which someone told me the day before. All I am suggesting is that in terms of marihuana, driving is a problem area. In any legislation dealing with marihuana, one would have to go into that aspect of it rather carefully. In terms of whether there is any difference in being stoned on marihuana or marihuana and alcohol.

Senator Neiman: I did not mean a difference in any abstruse sense. What I am referring to is actual physical impairment in terms of walking the line.

Professor Klonoff: I have not had the misfortune of being apprehended by a policeman. I honestly do not really know. Apart from the breathalyzer test, I am not terribly sure what one could use that would be admissible evidence in a court of law.

Senator Neiman: That is the point I am getting at.

Professor Klonoff: I am not sure what is admissible evidence in court in terms of impairment. I just do not have the answer. That is an area which one would have to discuss with those experts who can respond to it.

Senator Neiman: In other words, your recommendation is really a pious hope, because your profession cannot

assist the legal profession in drawing up legislation that could be easily enforceable or understandable?

Professor Klonoff: It might be a pious hope, senator, or it might then become one of the premises before one enacts legislation, depending on how one views it.

Senator Neiman: We would have to have some method of establishing impaired driving you are talking about. I have heard rumours to the effect that the breathalyzer test is in some jeopardy at the moment and that there are no tests that are even comparable to that as far as cannabis is concerned.

Professor Klonoff: That is correct.

Senator Neiman: So that, in fact, we are really in no position at this point in time to draft legislation to define "driving while impaired through the use of cannabis"?

Professor Klonoff: I cannot answer that. If my task was to define the terms of impairment within the Criminal Code, I would look into it, but I do not have the answer now.

Senator Prowse: Would cannabis have an effect more on judgment as opposed to physical appearance, or on reaction time, and that type of thing?

Professor Klonoff: Judgment is one of the areas we identified in our driving study that was affected more so than other skills.

Senator Prowse: With alcohol, it can be both judgment and physical appearance. I think you suggested that if we were going to go as far as this bill goes, we should concern ourselves about where the supply would come from. In that respect, I should point out we are not legalizing marihuana. We are simply moving it from the Narcotic Control Act to the Food and Drugs Act and, in so doing, reducing the penalties. Do you feel that in doing so it will be interpreted that we consider it quite all right for people to use marihuana if they can get it?

Professor Klonoff: My concerns arise from a number of sources, senator. There is similar legislation, for example, in the States of New York and California. I am not suggesting that Bill S-19 is modelled after the American legislation...

Senator Prowse: I do not think this one is, but it might be.

Professor Klonoff: ... but the moment one moves into decriminalization, regardless of the intentions of legislators, it gives the substance in question a greater degree of social acceptability than it had before the bill passed into law. The moment something is socially acceptable to use and there are no legal sanctions against its use, it would seem to me that the next step, logically, must follow very, very quickly, and that is something which makes me pause and think.

I actually wrote this statement this morning after midnight, because I was trying to reconcile current realities, and I think a current reality is that decriminalization or a change from the Narcotic Control Act to the Food and Drugs Act, is imminent, is inevitable. What I am concerned about, then, is the next step beyond that.

Senator Asselin: Legalization.

Professor Klonoff: Well, the next step would be to make the supplies available, again using the same model of alcohol, which would be through directed sources within society. Personally, on February 25, 1975, I am not prepared to accept that.

Senator Prowse: You are among friends on that.

Professor Klonoff: But that is the logical incongruent, and about which one has to think very, very carefully. Where is one forced to go next? It is not where does one go next. It might very well be that the second step must necessarily follow on the heels of the first.

Senator Prowse: As a psychiatrist and as an expert witness, which I consider you to be because of your training and background and work in this area, do you feel that if we do what is proposed under this bill we will be doing a good thing or a bad thing for the young people of Canada, who are our immediate and overwhelming concern? In other words, in attempting to avoid completely decriminalizing it and to put it into what we consider a social perspective, are we doing a bad thing, in the sense that it might be interpreted by many as meaning that we approve of the use of marihuana?

Professor Klonoff: In answering your question, senator, I again must move from the realm of science to opinion.

Senator Prowse: Just do the best you can. That is all any of us can do.

Professor Klonoff: I think the interpretation would be that it is a genuine effort to cope with the problem. In other words, this is how it will be seen. On the other hand, having moved halfway to cope with the problem of removing the stigma—

Senator Prowse: Some of the stigma.

Professor Klonoff: —of removing some of the stigma, it may be necessary to say, "This is as far as we have gone and we cannot and must not go any further." Whether or not one can do that is a moot point. I don't know what the wisest person in the world would say.

Senator Prowse: As a betting man?

Professor Klonoff: As a betting man, because I am an empiricist, I would suggest that making supplies of cannabis available through some channel—and I don't really know what the channel is—will not be far behind decriminalization.

Senator Prowse: Thank you very much, doctor.

Senator Godfrey: I would like you to define a couple of terms in your statement. I am getting a little more courageous in showing my ignorance. None of the doctors could define the word "narcotics" the other day. What do you mean by the words "non-adaptive" and "mal-adaptive"?

Professor Klonoff: The same thing. All I am suggesting is that there is no evidence at all that drugs—and here I am referring not only to non-prescriptive drugs, but to drugs in general—are necessary for people to get through the anxieties and stresses in our society. Again, if you look at the cannabis phenomenon from the point of view of the users, the adolescents overwhelmingly their point of view is, "I am doing exactly what my parents are doing." We have recorded this with some degree of precision. What is the difference between smoking a joint as compared to taking two drinks of Scotch? What is the difference

between a joint and a tranquilizer? They may have a point there, because a good deal of what the children do is learned. It is modelled behaviour. Hence, there is a responsibility on the part of society. If we are asking somebody to give something up, which we are asking an adolescent to do, it might be that we are going to have to take the lead, that we are going to have to give something up. We cannot differentiate, logically, between why one takes something which is prescribed, in which case there may be evidence that it is being abused as well, and why someone takes something which is non-prescribed. This is part of the conundrum. I do not think we address ourselves sufficiently to that. We do live in a chemical society. More and more people seem to require some type of agent or medication to get through the day. We have evolved all sorts of rationalizations for this, which adolescents may identify as rationalizations.

Senator Godfrey: You have not really defined the exact word "non-adaptive" for me.

Professor Klonoff: Non-adaptive in terms of well-being of the individual himself or the well-being of the individual within the context of society.

The Chairman: I don't know if Senator Godfrey is clear on that. I am not.

Professor Klonoff: About non-adaptive?

The Chairman: Yes.

Senator Godfrey: What does the word "adaptive" mean then?

Professor Klonoff: The premise is that in order to survive within some sort of definition of health one should be able to survive without taking agents into the body on a daily basis. That may be a roundabout way of saying it.

Senator Prowse: In other words, if we are going to use drugs, we are going to have problems. That is what it amounts to. No matter how you put it, that is where you end up.

Senator McGrand: Professor Klonoff, you mentioned in answer to Senator Godfrey's first question, that we live in a chemical society. You talked about our going from drug to drug, from alcohol to marihuana and then to the harder drugs. If this is a sort of chemical society in which we live, is it not due rather to a deficiency in the essential element of character building? I mean those built-in things we have that give us protection against stress. Is it not true that this leads this type of person from drug to drug? Now, this drug-to-drug movement could start with heroin and go back to alcohol, could it not?

Professor Klonoff: Well—

Senator McGrand: Is it not a search for that remedy, a deficiency which they cannot control by emotional means?

Professor Klonoff: Again it might. Let me give you some data here based on a group of 213 ostensibly marihuana users. These were long term, heavy users. One of the things we were interested in with respect to this group was the progression of drug usage as related to age. We found that on average the following were used at these ages: tobacco at age 12.8; alcohol at 14; psychedelics at 18.5; tranquilizers at 18.9; amphetamines at age 19; cocaine and heroin at 20.6. As you are probably aware, there was a good deal in the literature in terms of progression from tobacco and alcohol

on to the opiates. On the other hand, this is no implication that there is a necessary causal relationship. It would seem, on the other hand, that in a society where there is availability, in a society where one uses drugs for a reason, then one is going to experiment. If one is experimenting, then one will experiment with a variety of drugs. The reason why one moves from one to the other may just be as simple as availability. In other words, on night 7 LSD was available rather than marihuana. It might be that the peer group one is associating with have now moved from agent A to agent B. In order to remain part of the peer group, you must do what the peer group does.

There may be a host of explanations. One can move from the sociological into the fact that there is also a vested interest, so we are told, in terms of the distributors of opiates trying to get people from soft drugs onto hard drugs. So there is a host of explanations in terms of why this progression exists.

On the other hand, there does seem to be something in this, without being able to establish relationships, that there is this movement. Whether or not we are living in a society which engenders anxiety to the extent where we all have to use something may be another issue. We should keep coming back to the question that every time somebody says "Everybody is using it," that may be a statement of fact, it may be rationalization, or it may be an unconscious or conscious proselytizing to rationalize why one is doing this. Most of you have raised adolescents. This is the oldest ploy in the world. The adolescent girl comes in and says that all of her friends are wearing silk stockings, so why can't she?

If you had a chance to do a survey of all adolescents at age 12, in that peer group you would find that all were using the same ploys. That is how parents get manipulated into doing these things. One has to begin asking some hard-headed questions. Who is the "all"? Is it "inevitable"? In my point of view it is not inevitable.

Senator McGrand: I would just finish by saying that we used to use the word "peer" only seldom. For example, when a jury was chosen, it was chosen from the prisoner's peers and equals. That is about the only time I ever used to hear the word "peer." Now I heard children in school 13 and 14 years old talking about their peers. Everything they do is because their "peers" say that that is the thing to do. A boy today in school cannot be himself because his "peers" won't let him be. He has to do what his peers tell him. This is something I seem to have become aware of only in the last year so so. Could you say a few words about that? Are we living in a "peer" culture?

Professor Klonoff: Again this is a complicated issue. In a rather simple-minded explanation, as various social institutions which we have had in the past have weakened their holds upon the adolescent, such as the church and the family, the adolescents seem to have begun to look for other value systems. One of the places they find their values is in terms of their own age group. This is all we are referring to. Since this is what we are referring to when dealing with adolescents, it is extremely difficult not to be struck by the observation that what a friend says to an adolescent become critically more important than what his parents may say. This is what we are referring to in terms of peer-group pressure. There is no question that it is there. If you ask why this individual cannot say, "All right, I am going to go my own way; I am going to be an individualist," I wish that were so. We find more and more conformity to peer-group pressures and peer-group val-

ues—not to be the odd man out, not to be viewed as different, not to be seen as being chicken.

Senator McGrand: But it has always been that way in our society. Is there evidence that it is more so now than it was previously?

Professor Klonoff: In the past it has been counter-balanced by other systems and by other values in society. The family itself was a source of guidance. It played its part in the decision-making process of the adolescent. The churches and religion again formed a source that entered into the values and the decision-making process, and as these have become less important, then the peer-group—what one's friends say and do—tends to become overriding.

Senator Neiman: Dr. Klonoff, you had the opportunity of hearing our witnesses from the west coast this morning. Would you care to give us your figure about the seriousness of the marihuana problem among the teenagers or the younger group on the west coast? Do you feel that it is as prevalent in the schools in terms of use as was stated by Mrs. Haley this morning—three-quarters of a junior high school?

Professor Klonoff: I hesitate to comment on anything that a mother says, because I respect mothers above all else. Also I do happen to have three children myself. I think it is considerably less than she believes, but on the other hand the scope of usage is a problem, because you keep coming back to the question, "What is usage?" If you speak to adolescents who say they have used it, it might well be that they used it once or twice. They may have been present where somebody lit a joint and passed it around. We must keep in mind that somewhere around 60 per cent of adolescents now are non-smokers, and so to pass around a joint may or may not be a meaningful exercise, for the simple reason that the only way marihuana can have an effect is that you must inhale it and then it goes from the lungs into the blood. If you do not inhale it, you can get involved in the adolescent fantasies of contact ties and this gets down to the old tale of walking by, smelling something and getting drunk. Well, you don't get drunk merely by smelling. So one cannot be really affected by marihuana if one simply takes a little smoke into the mouth, keeps it there for a matter of seconds, blows it out and does not inhale it. So it all depends upon whom you ask and what your terms of reference are. I have not found any evidence at all that three-quarters of the adolescents are using soft drugs. To me that would be a very, very startling figure.

Senator Neiman: I thought so. Then what would your best estimate be of the numbers in our youth groups who have moved from soft drugs into the hard drugs scene?

Professor Klonoff: Again, I do not have any data. Impressions are interesting, but I do not think that they should serve as a basis for decision-making in a problem of this scope for groups such as this. If you are talking in terms of the percentages that have gone on to hard drugs, we found that it amounted to something like 7 per cent. Now whether this figure is inflated or whether it is low, I cannot honestly say. There is not enough data available. Here one has to be very cautious. Studies done in New York State or in the City of New York may be no more applicable to the Canadian scene than studies done in Cairo. They may be interesting in terms of asking yourself the type of questions that should be asked when looking at the Canadian scene, but I am not terribly sure that one can

accept those studies or accept the percentages. We found it was somewhere between 5 and 7.

Senator Neiman: So that in your view that figure of between 5 and 7 per cent of possible progression from the soft drugs to the hard drugs should not be to us a decisive factor in considering changes in the legislation that might appear—and I stress might appear—to soften our attitude towards the use of cannabis?

Professor Klonoff: If the incidence of usage in that age group was 7 per cent, I would be very alarmed. Again it depends on what percentage of opiate use begins to alarm you. I would be alarmed at 7 per cent.

Senator Neiman: Furthermore, perhaps your idea and mine may be a little different so far as the term “decriminalization” is concerned. As you have heard the chairman say, we have used that term quite frequently during our hearings. My view of decriminalization is some type of change in the law which would in effect eradicate or at some point get rid of a criminal record. It does not mean legalization. In my view, our proposed changes in the law do not amount to decriminalization. You said that you were treating this change in our law, or the proposed changes, as a step towards decriminalization. I just wanted to clarify that. Your definition could be as good as mine.

Professor Klonoff: I am defining decriminalization within the context of Bill S-19, and that is to move it from the Narcotics Control Act and put it under the Food and Drugs Act.

Senator Neiman: Would you not agree that that is really just an administrative change in the sense that cannabis is not a narcotic?

Professor Klonoff: It might be erroneous to have it in there in the first place.

Senator Neiman: We are just moving it over, but we are maintaining penalties for the various offences referred to, although they may have changed. One is becoming a little more severe and the others have softened to a slight degree. Would you consider that, with the number of people involved in the marihuana scene, we should not move any further than the proposed penalties that are given here? In other words, should we move to my definition of decriminalization, which would mean at some point to provide for the criminal record, if there is one, being erased for the offence of simple possession only, and not for the more serious offences? With your experience, would you feel that could be justified?

Professor Klonoff: I would say unequivocally yes. Again, it relates to our intention. One is not just going through the manoeuvres of changing an act so that it moves from narcotic control to food and drugs. The intention here is not to burden or saddle an adolescent with a criminal record forever. I would certainly agree with you that removing that criminal record—I am not terribly sure how—is reasonable, sensible and just.

Senator Langlois: Mr. Chairman, as I understood the evidence given us this morning by Mrs. Haley, the percentage she gave was not in relation to users of marihuana and soft drugs but to those who had experimented with marihuana. There is a world of difference, to my mind. As the witness told us a while ago, a child can take a puff of a cigarette, of cannabis, and blow it out straight away. He is

not a user, but he can be said to have experienced it. I believe Mrs. Haley this morning gave us a percentage.

Coming back to the submission presently under consideration, in your recommendation, Dr. Klonoff, dealing with the possibility of the government assuming responsibility for providing cannabis on demand, you say it would be premature at this time. Is your opinion based on experiments outside of Canada, in England, or is it based on something else?

Professor Klonoff: With respect to the English experiment, the literature is now pointing to it as having been a miserable failure in terms of providing heroin on demand. It becomes a more complicated issue. All I am suggesting here is that logically, and from the point of view of health, or of not creating any other means in society for escape, it would be unwise at this point in time to make cannabis readily available through governmental outlets. If we stop and think for a moment, you would recognize that enforcement is literally impossible. We say that it would be at the age of majority—say, age 19. If we stop and ponder, what we are saying is that it will be made available to everyone who wants to get this, who can get over whatever legal hurdles there are to get it. In my opinion, and in terms of my experience of cannabis, of reading the literature, and of the social scene, I think it is premature in 1975. I do not know what things will be like in 1977, but here again, in terms of something as controversial and complicated as cannabis, perhaps a step by step change is more warranted than a more radical change. I view making cannabis available on demand through governmental outlets as being a radical way of dealing with it. It may turn out to exacerbate the problem rather than cope with it.

Senator Langlois: I understood you to say that in years to come we would have to take that step, but that you are not prepared to recommend it today. Is that the effect of what you have just said?

Professor Klonoff: I am hoping that before we do, there will be new knowledge, new wisdom, and maybe new ways of coping with it. I am not prepared to accept the degree of pessimism at this time that drug usage is inevitable and we should let everyone have what they want. I cannot accept this today.

Senator Langlois: We had officers of the Narcotic Branch of the RCMP before us who referred to the enforcement of speed limits. There are special problems to enforcing speed limits on the highway. If you remove the speed limits, you may cure your problem concerning enforcement, but you will not cure the problem of excessive speed on the highway. The fact that, apparently, you are prepared to accept at a future date that the government might be called upon, in all the circumstances, to provide such drugs on demand, might solve the enforcement problem, but it will not cure the social problem.

Professor Klonoff: Part of the social pressure—I am using the word “social” in the generic sense, to decriminalize, within the terms we have agreed on—is that this may result in lesser usage. On the other hand, if the act as written at the moment is promulgated and we find that within two years drug usage is increasing rather than decreasing, that it has resulted in problems which we had not anticipated, it would require another look. This again would be a reason for a step by step procedure in terms of dealing with cannabis rather than saying “All right, it

logically follows that if there is no penalty for simple possession, for simple usage, let us provide it." I think that at the moment is unwarranted.

Senator Langlois: In the last paragraph of the summary of your submission, you suggest that drug education has to date proven to be anything but successful, in terms of deterring use, but models of education should be explored and a realistic education program implemented.

Am I to understand from that that we have not tried hard enough to educate young people against the use of drugs in general?

Professor Klonoff: I do not think we have tried hard. We have even asked the wrong people to try for us. Law enforcement agencies may not be the people to provide such education. The well-intentioned person who, for some reason or other, comes on the scene, may or may not be the best person for this education. We have not tried hard enough, nor have we exhausted the possibilities of shaping attitudes by education.

Senator McGrand: Concerning research for a means of getting the right message across, we spoke a few moments ago about "peers". If the peers say "Use marihuana," how do you get a lever in there that will counteract it?

Professor Klonoff: If I had an answer as to how one could counteract peer group pressure, I would be in line for a Nobel prize. I do not think I have an answer.

Senator McGrand: You mentioned that this will have to come. If you think it is going to come, how do you go about it? I do not blame you for not having the answer.

The Chairman: Senator Fergusson.

Senator Fergusson: From the evidence we have had, it certainly appears there can be physical damage caused through the use of cannabis, and in item 7 of your brief, you say:

Perhaps today in the public's view, the real issue vis-a-vis cannabis, is not whether the drug causes damage, but rather whether its use has spread so widely that, like alcohol, the social costs of efforts to prohibit its use exceed the physical risks of use.

What, in your view, are the social costs of efforts to prohibit its use? I do not know quite what you mean by that.

Professor Klonoff: The whole business of law enforcement; the whole business of taking an adolescent at the age of 16, 17 or 18 and giving him a criminal record; the hassle within the family itself. Anyone who is raising adolescents knows there are very profound problems in that respect.

I am not very sure that we have been successful in disseminating information in terms of its effect. Scare campaigns telling people that if they smoke marihuana they will end up shooting heroin has no real effect, because the person to whom such campaigns are directed immediately turns off. To be told that you are going to have malformed babies if you persist in smoking marihuana does not deter people. It might well be that the effects which have been identified have not been communicated in a manner which is apt to reach the people to whom we want to direct this information.

Senator Fergusson: Do you not think they accept it at all?

Professor Klonoff: I remember in British Columbia a number of years ago part of a drug abuse campaign was to show a prisoner sitting at Oakalla, being interviewed by someone, and the last comment was, "The way I got here was to smoke marihuana."

Senator Prowse: He just got caught.

Professor Klonoff: What I am simply saying is that a scare campaign is not the proper educational program.

Senator Fergusson: How would you go about it, then?

Professor Klonoff: It is a complicated area. I think we can do a much better job than we have done in the past.

Senator Prowse: I was going to ask the same question, Mr. Chairman, but I think it has been adequately covered. Dealing with paragraph 4 of your brief, Dr. Klonoff, can you expand on what you mean by "effect on adolescent maturation?"

Professor Klonoff: What is being referred to is that drug abuse among many adolescents becomes a symptom of many things. It is related to conflicts with the parents, to dropping out of school, and to the fact that a number of adolescents who abuse drugs end up in a state of disorganization. All these things are included in the effect on adolescent maturation. Here again, we are making the premise that the adolescent, who is in a state of transition anyway—adolescence being a difficult time of life for him—is more vulnerable to these agents than an adult who can exercise his or her judgment and be more discerning and more discriminating. This is what we refer to in terms of adolescent maturation. It may prevent him from making as ready a transition as he would if he were not a drug user.

Senator Prowse: In other words, when he faces a tough problem, he sees an easy escape at a time when he really should be facing up to it, and having opted for the easy escape, that will probably prevent him from ever being able to cope?

Professor Klonoff: That is a reasonable explanation.

Senator Quart: First of all, let me say I know absolutely nothing about drugs. To begin with, I would be scared to take even a sleeping pill. Last evening I had the opportunity of sitting at a dinner table next to a very prominent brain surgeon here in Ottawa, and we had a discussion concerning drugs and what this committee was doing. He felt that this committee had a very responsible job to do in connection with this bill, although his impression was that it dealt with the legalization of marihuana. In our conversation, he blamed the medical profession for prescribing far too frequently such drugs as sleeping pills, tranquilizers, and so forth, saying that then the patients became accustomed to that practice. Being very inexperienced, I said, "Look, you doctors are like lawyers in that you are always contradicting each other. Why don't you work out some sort of guidelines for parents and teachers?" In answer to that, he began telling me about some of the guidelines. I also asked him whether he felt there was a lack of cooperation between teachers and parents, and his view was that if teachers would indicate to the parents what the student was doing, and the parents, in turn, principally the mother, could watch out for these things, it could probably be stopped right at the beginning. Again we come to the question of alcohol versus drugs. In my very unprofessional experience, I would prefer alcohol anytime.

The Chairman: Have you tried both?

Senator Quart: No, I have tried only one, alcohol.

Senator Langlois: Merely experimentally?

Senator Quart: No, I enjoyed it as well. Having four sons and daughters, not to mention over 20 grandchildren, I would much prefer to see them plastered, if that is the word, than stoned on drugs.

Senator Prowse: Because they have a hangover with the one and not with the other?

Senator Quart: I asked the doctor, who is a very good friend of mine, which he preferred, and he felt that, somehow or other, alcohol gets out of your system in a day or two, but drugs remain in the system and, therefore, end up in the brain, as one witness has told us. I think all the experts should get together and draw up some guidelines for parents. Perhaps the guidelines would be different in that drugs might affect people differently. Some young people might be cranky and others might be very, very good natured about things. Is there no possibility that a set of guidelines can be drawn up?

Professor Klonoff: If you are asking whether there are hard and fast rules for child rearing, the answer is "no". It is even more complicated when one moves from that to the use of drugs in the generic sense. The only thing I can say is that it is not a matter of either alcohol or drugs; it is a matter of having a successful system of values which enables you, hopefully, to cope with either, or a minimal amount of either.

The Chairman: Thank you very much, Dr. Klonoff. We appreciate your help.

Honourable senators, our next witness is Dr. Andrew Malcolm. Dr. Malcolm has prepared a brief which you now have before you. He is ready to summarize his brief in his presentation, but he feels he would like to have the whole brief on the record. For that reason, I would ask for a motion that it be printed as an appendix to our record.

Senator Neiman: I so move.

Hon. Senators: Agreed.

The Chairman: Will you tell us briefly your qualifications to speak on this matter, Dr. Malcolm, preliminary to your presentation?

Dr. Andrew Malcolm, Psychiatrist, Toronto, Ontario: Yes, Mr. Chairman. Honourable senators, I graduated in medicine from the University of Toronto in 1951, and did a psychiatric residency in New York City. I subsequently studied in London and then in New York again. I have been in Canada since 1958. I have had a particular interest in drug dependence for a very long time, in New York and London, and particularly in Toronto since about 1962 when I joined the Addiction Research Foundation. I worked in a number of different areas of that foundation—alcohol, marihuana, solvents and narcotics. I have written several books on the subject of drugs—*The Pursuit of Intoxication*, and *The Case Against the Drugged Mind* and a new book to come out next month, I hope, called *The Craving for the High*. This ought to be a very up-to-date study of some of the problems with particular reference to marihuana from a chemical point of view.

Senator Langlois: Mr. Chairman, before we proceed with this, may I say we have been handed a copy of a letter addressed to the Canadian Medical Association, blaming you for having misrepresented the position of the Canadian Medical Association before this committee. At least that is my interpretation of it. May I ask the witness whether a reply has been received from the Canadian Medical Association. If so, it should be tabled with this brief.

Dr. Malcolm: To my knowledge, this letter which was prepared by 12 members of the Canadian Medical Association across the country, all of whose names have been affixed there, and has had no reply. There has been no reply to me or to any of the other people who have affixed their names there, from the Board of Directors of that association. I make some reference to this matter in my brief, which I shall be reading to a great extent in a few minutes.

Senator Prowse: The letter is dated February 13th, so it is not surprising that they have not replied as yet. There has not been too much time.

Dr. Malcolm: It might take some further time before they respond. Perhaps we will still hear from the board of directors regarding this.

Senator Laird: Dr. Malcolm, were you present at the meeting of which you speak in your letter?

Dr. Malcolm: The meeting referred to in my letter was the presentation by Dr. Stephenson before this committee a couple of weeks ago. I was not present at that, but I have read the brief they presented and I saw the television and other press communications that that group made after their presentation here, and I and a number of other people were quite alarmed as to the manner in which that material was presented.

The Chairman: I don't think you are answering Senator Laird's question.

Senator Laird: You mention in this letter that there was a meeting at which a resolution was passed by 225 to 2.

Dr. Malcolm: I was not present there, but I am familiar with the results of that meeting and indeed it was passed with 225 delegates in favour to 2 against. This was particularly drawn to my attention by Conrad Schwartz of British Columbia.

Senator Laird: To boil it down, I suppose you take a dim view of their suggestion not to make a conviction for mere possession a matter of record. Is that correct?

Dr. Malcolm: It amounts to more than that. I think it might become clearer as I make my presentation.

The Chairman: Did you suggest, Senator Langlois, that this letter should be printed?

Senator Langlois: It should be brought to the attention of the members of the Canadian Medical Association. It is based on news reports as to what was submitted to us by the Canadian Medical Association.

Senator Prowse: My recollection of what the Canadian Medical Association said when they were here is that they did not go so far as to suggest what is in this letter which is in front of us now. I thought they were much more cautious than this would indicate.

Senator Laird: You see, Dr. Malcolm, the biggest thing we have to fight in this committee is the power of the media to make it look as if this bill is legalizing marihuana. It is doing the opposite.

Dr. Malcolm: I am extremely well aware of the problem and I must say that I did feel the performance of the Canadian Medical Association delegates here might well have given that very impression—which I regretted, because I do not think it is justified.

Senator Neiman: I don't think they gave us that impression. If you had been here, you would have understood that.

Dr. Malcolm: I am very pleased about that.

Senator Neiman: We will send you a copy of the transcript of the hearings for that day, to reassure you.

Senator Prowse: Mr. Chairman, in fairness to the representatives of the Candian Medical Association who appeared before us and also in fairness to Dr. Malcolm and his committee who are undoubtedly acting with the best intentions in the world, may I suggest that this letter which he addresses to us should be considered as a private matter between him and the association and withdrawn from circulation here. I think it has no relevance here. We should then continue with the brief which he has prepared and which he has placed before us, having given us his very substantial qualifications to make representations in this matter.

Senator Godfrey: Mr. Chairman, might I suggest that the witness, who says he wants to discuss this in his presentation, be allowed to proceed with his presentation? Someone has come in without recognition from the Chair to comment on this before he even had a chance to get going. Let us hear what he has to say about it and then we can tell him what we think of it. We cut him off before he started, without recognition of anybody by the Chair, with the exception of myself, before he had a chance to have his say. Let us listen and then tell him what we think.

Senator Prowse: Well, you could read the letter.

The Chairman: You can proceed, Dr. Malcolm.

Dr. Malcolm: Mr. Chairman, honourable senators, it is possible to identify three phases in the history of man's study of this drug. These could be called the literary, the clinical and the scientific phases. The literary phase which has gone on for many thousands of years is exceedingly interesting but it is by far the most unreliable of our three sources of information about the effects of cannabis on man. It is interesting that this literary material was really just about all we had available at the time the statutes were drawn up to control the use of this drug. That is why these statutes appear to us to be so inappropriate today.

Although there were earlier studies, particularly in India and Panama, systematic clinical work did not really begin until 25 years ago. Clinicians are people trained to observe and record signs and symptoms. They have a specialized interest in such things. As a matter of fact, significant clinical work was begun only about 10 years ago.

The third phase, the scientific, could not possibly have begun until tetrahydrocannabinol, the active principle in marihuana, was made available in a pure and precisely measurable form. This began only five years ago.

It should not surprise anyone that the controversy surrounding this drug should continue. This controversy, it seems to me, has to do with two points of emphasis: the damage that may be caused by the drug, and the damage that may be caused by the law which was designed to control the use of the drug.

I feel strongly that it is about time we recognized that this either or situation is not desirable. The law, as it is currently embodied in the Narcotic Control Act, is obviously disharmonious with our age, and the drug clearly is hazardous to health. We must accordingly diminish the weight of the law without giving the impression that this is being done because somehow we have reached the conclusion that the drug is benign.

In my opinion, Bill S-19 is an attempt to achieve the first of those two goals. It will certainly fail if its passage is not accompanied by very considerable educational effort. We must certainly not allow ourselves to feel that this is a benign drug. Dr. Nils Bejerot of the Karolinska Institute of Stockholm, a few months ago, at a Senate symposium in Washington, said:

The demand for legalizing cannabis has been strongest in those countries which have the shortest experience and the weakest forms of the drug.

At this same symposium, Professor M. I. Soueif of Cairo University and Dr. Robert Hall of Kingston, Jamaica, strongly endorsed this statement on the basis of what they had observed in their own countries. It would seem that there are some countries where the use of this drug is fairly widespread and, we might say, acculturated. In short contrast we have the case of Canada, a country in which a relatively small number of people have used a fairly weak variety of this drug over a short period of time.

The clamour here, as we can see, has largely been concerned with the injurious character of the law. In making this important point, the proponents of this view have very often tried to establish that the drug itself is benign. Marihuana is said to be "soft". You hear this word all the time. In my opinion, this is an exceptionally mischievous word. It gives the impression that this is a benign drug, comparable to a soft drink. It is a term we have been familiar with for some years. Heroin is said to be "hard", a term which is recognized as meaning dangerous. Marihuana is said to be a symbol of the spiritual renewal that is being offered to our maladjusted society, the new culture as it is often described, which is said to honour spontaneity, immediacy and sensory experience. Marihuana is said to facilitate these things. Cannabis is said to expand the mind, enhance perception, confer joy, and, most importantly, impart a sense of belonging to a group of like-minded people. Marihuana has been described in highly rhapsodic terms for such a long time now that a great many people are more and more inclined to accept the use of it.

In harmony with this more receptive attitude, the demand for the drug has obviously increased, and the system of supply has become progressively more sophisticated. The social and legal risks that once attended its use have been markedly reduced, and a great many extremely powerful people have declared their belief that this is a benign drug, that it is a sweet, and even an enlightening intoxicant. A few deliberate attempts have been made to discredit the literary, clinical and scientific evidence that seems to contradict this view. This receptive or at any rate less critical attitude has undoubtedly led to an increase in every phase of cannabis-related activity, including the per capita consumption of this drug.

I would like to consider here some clinical evidence, because that is my speciality. I must say at this point that I, and many other members of the Canadian Medical Association, were extremely disappointed by the brief presented to this committee by Dr. Bette Stephenson, President of the CMA. We felt that a great medical organization should be particularly inclined to emphasize the medical aspects of the subject at hand, that being their field of expertise. While we sympathized with Dr. Stephenson and her delegation in desiring to bring about necessary level reform, we felt that on the occasion of their presentation here they did not adequately represent the specialized knowledge of the 26,000 members of the association, all of whom are physicians. Indeed, their references to the medical evidence seemed practically parenthetical. I have read their brief and heard further discussion. It seems to me that the essential statement should have been medical. They could have introduced some legal observations but that should not have been the burden of their statement.

It has occurred to me that perhaps Dr. Stephenson felt the Canadian Bar Association should speak for the medical people in this case. If any group in this country should have presented, in a succinctly and effective way, the medical evidence, it should have been the Canadian Medical Association. In my opinion, they did not adequately represent the findings. Although it is not difficult to recognize that a criminal record is a terrible thing, I thought the CMA's statement was inadequate, and indeed a considerable amount of medical information indicates that cannabis is, in fact, a dangerous drug.

I should like to review some of this material and put it into this record. Dr. W. D. Paton, Professor of Pharmacology at the University of Oxford, an extremely learned man, pointed out in his testimony to the United States Senate that cannabis was a complex mixture of at least 40 chemicals, several of which were known to be psychoactive. "Second," he said, "And possibly the most important single fact about cannabis is that THC is intensely soluble in fat." In fact, this substance is 10,000 times more soluble in fat than is alcohol. Dr. Paton said: "Its fat solubility is greater than that of industrial solvents and is exceeded only by substances like DDT. This fat solubility gives it an affinity for, and ability to traverse the fatty material in cell membranes."

On the basis of this outstanding physical property, it was possible to explain "the cumulative effect of this drug and the persistence of the effect when the drug is withdrawn, and its passage into all parts of the body."

In the case of most drugs, as you realize, the metabolism begins almost immediately and material breaks down progressively in the following hours. In the case of marihuana, it would seem that material passes into the fatty tissues, particularly in the cell membranes, and can be stored there.

Dr. Julius Axelrod, of the National Institute of Mental Health, reported that in his laboratory sensitive methods were developed to measure THC in the blood and urine of man. Following the injection of the drug to volunteers, he found that "THC and its biochemically transformed products continued to be excreted in the urine for more than one week." Axelrod assumed that THC and its metabolites must accumulate in the tissues. In animal studies he proved that this was so. He said:

After a single injection of THC there are barely detectable concentrations of THC in the brain, but after

repeated administration there is a gradual accumulation of the drug in the brain.

He made many other observations about the chemistry of the drug being destroyed.

Dr. Robert Kolodny, of the Reproductive Biology Research Foundation of St. Louis, reported on his study of the reproductive consequences of marihuana use. Drs. Kolodny and Toro examined two groups of twenty men aged 18 to 28. The first group had used marihuana at least four days a week for a minimum of six months. Their consumption had been from nine to 18 joints per week. The other group, the controls, had never used marihuana. Dr. Kolodny said:

The principal male sex hormone, testosterone, was found to be approximately 44% lower in the group of men using marijuana. This finding was not uniform in all the men studied, however, and it appeared to be related to the amount of marijuana used. Men who averaged ten or more marijuana joints per week had significantly lower testosterone levels than men who smoked fewer than ten marijuana cigarettes weekly.

Of further interest was that three of the subjects discontinued the use of marihuana for a two-week period and in each instance there was a significant increase in testosterone levels during this time, bringing them back to normal. Testosterone is a hormone produced by the male testes and its essential element is what establishes and maintains masculinity. Their first subjects were males, and they now propose to do a study on women to see what happens to other hormones, such as estrogen. Moreover, in another study, Kolodny noted a sudden drop of 27 per cent immediately following a single exposure to marihuana in men who had not smoked for two weeks and whose testosterone levels were back to normal.

It is extremely important for me to point out that just as the literary and clinical evidence is highly contradictory in this field so, indeed, is the scientific. Mendelson and Meyer of Harvard failed to find any depression of testosterone production in a group of heavy users. All we can say at this point is that there is some early evidence that this drug may interfere with the production and regulation of a variety of hormones, but we are certainly not in a position to make any definitive statement on this issue. The various hormones which regulate temperature in the body, as well as various pituitary hormones might be affected, too.

Dr. Cecile Leuchtenberger of the Swiss Institute for Experimental Cancer Research said:

The observations that marijuana cigarette smoke stimulates irregular growth in the respiratory system,—

And that is something which has been confirmed in several laboratories.

—that it interferes with DNA stability in cells and of chromosomes, that it disturbs the genetic equilibrium, strongly suggests that marijuana cigarette smoke is a health hazard which may not only be implicated in lung carcinogenesis, but may also have mutagenic potentialities.

And "mutagenic potentialities" gives rise to abnormalities in the fetus.

This work was supported by that of Dr. Morton Stencher of Salt Lake City. This investigator reported that among a group of marihuana users there was an average of 3.4 celled with chromosome breaks per one hundred cells

examined. Among the non-using controls there was the normal incidence of 1.2 cells with breaks.

You always find chromosome breaks in any population, but in this group he found an average of 3.4 cells, which is really strikingly high. If you exclude those people who use drugs other than marihuana there is no significant effect on the finding, suggesting that it wasn't as a result of LSD or other chemicals, but marihuana.

This work has been challenged by other equally learned students of the subject. Warren Nichols of the Institute of Medical Research in Camden found no evidence of cellular abnormalities in a group of 24 people exposed to cannabis. This is a comment on the confusion even in scientific work at this time.

Dr. Gabriel Nahas of Columbia University has observed that the synthesis of DNA by certain blood cells known as lymphocytes, a type of white blood cell, was depressed by 40 per cent among users of cannabis. Because lymphocytes are particularly responsible for the body's defensive reaction to intrusive disease elements, Nahas suggests this affects the immune response, a very important matter. Again, we have strikingly contradictory evidence. Lessin and Silverstein of UCLA have failed to confirm Nahas' observations.

Dr. Nahas' work, on the other hand, gained considerable support from that of Dr. Akira Morishima. Morishima reported that:

When the specimens of marijuana smokers were compared with those of people matched for age and sex, the mitotic index, or the proportion of those cells in the process of cell division was noted to be only 2.3 percent in marijuana users, compare with 5.9 percent for the controls.

It would seem that lymphocytes in marihuana smokers could not increase the production of DNA sufficiently to the point necessary for cell division. DNA is the basic chemical contained in all cells that carry the genetic code. It is DNA that causes newly formed cells to be identical to the mother cell from which they are derived.

Professor Arthur Zimmerman of the University of Toronto reported on his examination of the effects of THC on the growth of certain unicellular organisms. He said:

These studies clearly demonstrate that Delta-9-THC—Which is this active principle we are basically talking about—

—at a modest dosage reduces the growth and delays cell division of a unicellular protozoon *tetrahymena*. These effects on cell growth are related to a depression of cell metabolism, i.e., a reduction of DNA, RNA, and protein synthesis.

I want to make it quite clear that none of these scientists presented their evidence as though their work was definitive. On the contrary, they indicated that their findings constituted only warning signals that should at least tend to guide responsible people in forming opinions about the hazards of cannabis use. These warning signals are numerous at the present time. The physical effects of cannabis are now known to be profound and complex. They appear to affect the function of the organism at the most fundamental level of the living and dividing cell.

During his tour of duty as a medical corps officer with the United States Army in Europe, Dr. Forest Tennant, a man I have met several times, carried out several major

studies among users of hashish, which was the drug of choice among soldiers in the American Army in Germany, particularly. Of 110 heavy users, Tennant said:

All exhibited a personality disturbance which prompted psychiatric consultation at some point during their period of high-dose hashish consumption. Major manifestations were apathy, dullness, and lethargy, with mild to severe impairment of judgement, concentration, and memory.

In other words, I have moved now to a consideration of certain clinical findings as opposed to certain scientific findings. Tennant also said:

Although violence or overt acts of crime were rare in these patients, they were frequently in social and legal difficulties due to failure to care for their personal affairs.

With respect to physical findings, Dr. Tennant drew particular attention to hashish bronchitis, and in this respect he makes some very striking statements. He found among 20-year old soldiers the kinds of pre-cancerous change in the lungs that one would otherwise find in a person who has smoked cigarettes heavily for 20 or 30 years. But these were 20-year olds who had smoked hashish! He found that a very striking finding.

That the effects of cannabis use are dose related there can be absolutely no doubt. We know further that the person who is interested in this form of intoxication shows a distinct tendency to progress to more potent forms of the drug. He may start with the loose form of marihuana, the THC content of which is about 5 per cent, but when hashish becomes available, the tendency is to try it.

It was often felt that the Americans, for example, would not be interested in the more potent forms. but Tennant's work with the American Army in Europe proves this to be absolutely and totally false. American soldiers in Germany, offered hashish, preferred it.

Now, thanks to the operation of the Brotherhood of Eternal Love, an organization founded, largely, by Timothy Leary, which retained some pretty high-priced chemists, liquid hashish has now joined our problem. This material may contain at least 50 per cent THC, and it is known to have contained up to 65 per cent of pure THC. This material is, for many people, as hallucinogenic as LSD or DMT, and its existence has increased the seriousness of the marihuana problem by several orders of magnitude.

We have created, and this is another area, an advanced technological society and we have high speed machinery. We have also developed a kind of attitude in which it is virtuous to seek intoxication in our society. There is obviously a collision course between these two points of view. This can be particularly well illustrated in the case of the drinking driver or the drunk driver. Alcohol is obviously the supreme offender.

Today what we see is the mixing of drugs. It is sometimes very hard to know what drugs the person has used to become intoxicated. Professor Ole Rafaelsen of Copenhagen has done some extremely effective and well designed studies into the use of marihuana among drivers and the effect of marihuana on driving performance. Rafaelsen said to the Senate committee in Washington:

"The subject's ability to estimate time and distance was, in general, much more strongly affected by cannabis than by alcohol. Cannabis has such pronounced effects on skills and judgment essential for driving to

make motoring during cannabis intoxication a hazardous undertaking."

At the same 1974 Senate hearings, Dr. Phillip Zeidenberg of Columbia University said, and here we move into my particular area of specialized interest:

"Possibly the issue of greatest importance in the area of behavioural toxicity of marijuana is the question of the amotivational syndrome. This problem is frequently dismissed by those favouring legalization as a syndrome that is brought about by coexisting psychiatric difficulties in those individuals who coincidentally use marijuana, or, alternatively, it is written off as something which is brought about by hopeless socioeconomic conditions in backward @third world nations.' Nevertheless, this syndrome is seen consistently in virtually all studies of chronic users in all countries, and there are no reliable ways of measuring the subtle changes in mental state that might cause such a syndrome. This type of apathy and alienation may be brought about by drug-induced changes in capacity for attention, concentration, and motivation for which we have no adequate measures."

Drs. Kolansky and Moore of Philadelphia have carried out detailed clinical studies of hundred of marihuana users over the last nine years. In the course of this time, they became convinced that the psychic changes they observed were the result of a specific toxic effect on the cells of the cerebral cortex. According to their observations, and they have made many now:

With a history of regular marijuana or hashish use (three to ten or more times per week), the individual was characteristically apathetic and sluggish in mental and physical responses. There was usually a loss of interest in personal appearance and a @goallessness.' Considerable flattening of affect at first gave an impression of calm and well-being so that the patient seemed to be at peace with himself and the world. This was usually accompanied by his own conviction that he had recently developed an emotional maturity and insight that was aided by or even a result of his generous use of cannabis. Having found his @true self', he claimed that his aggression, ambition and life goals no longer needed to follow those of the mainstream of society.

I am now considering an issue around which there has been great conflict in recent years: namely, the etiology or causation of this amotivational state which clinicians have drawn attention to. Clinicians such as Kolansky and Moore, Powelson and Hardin Jones of Berkeley, Conrad Schwarz of U.B.C. and myself in Toronto have particularly described what we felt was an abnormal state of mind among heavy users of cannabis. At the Washington symposium, I said:

These people seemed to be lackadaisical, passive, uninterested in the world around them and demonstrably unreliable. They would often be verbally quite facile, but the range of their thought and feeling would be very limited, I might even say impoverished. Their attention spans would be short, and they would seem interested only in experiencing each moment as it occurred without reference either to the past or the future. Their thinking would be frequently non-logical, and they would be very fascinated by magical explanations for natural phenomena. Absurdities and incongruities seemed only to amuse them in a peculiarly superficial way.

At the present time, I am inclined to think that this clinical picture, which is by no means uncommon, is due to a temporary and essentially toxic derangement of mental function. Kolansky and Moore, the late A. M. G. Campbell of the Bristol Royal United Hospital, Robert Heath of Tulane and many others, are convinced that it is evidence of organic and probably irreversible brain damage. This controversy will not soon be resolved but in the meantime there is no reason whatever for us to be complacent. Cannabis certainly has an acute effect on brain function; there is absolutely no controversy about that. The question now is whether the presence of cannabis in the cells of the brain—where it is found, and this is established by Axelrod and others—actually brings about the progressive destruction of those cells, and earlier than would the presence persistently of certain other toxic chemicals which are very famous in our society.

Is this a faster process, as Patan of Oxford has suggested it was. He said a very interesting thing, by the way. He said that the penalties for excessive alcohol use were paid later in life. From Patan's observations, the penalties from the use of marihuana were paid early in life, as though the whole process was speeded up. All this must be looked into in far more detail.

Having spent virtually all of my time talking about the medical aspects of this, I should like to make a very few observations on the legal issue. I come then to the other half of the equation: the damage done by the law. As a psychiatrist I am extremely aware of the distress that is engendered by accusation, conviction, incarceration and, certainly, by the existence of a criminal record. My own feeling is that people who have been found guilty of trafficking might well be punished by the law. I have little sympathy for such people. In fact, I regard the intervention of the criminal justice system as very appropriate in their case. My only real criticism of Bill S-19 in this regard concerns clause 50(2), which appears to state that if the person who has been found guilty of importation can establish that he "imported cannabis for his own consumption only", then the otherwise sufficiently severe rule regarding importation will not apply. This qualification, it seems to me, will seriously undermine the basic intent of this clause.

On the other hand, I compliment the authors of Bill S-19 for their determination to remove the control of cannabis from the Narcotic Control Act, for reducing the maximum penalty for simple possession to a fine of \$500, and for resisting the strong influences that have for some time been advocating the complete decriminalization of this highly deceptive drug.

Bill S-19, then, should be subjected, in my opinion, to certain adjustments and then passed. The Non-Medical use of Drugs Directorate of the Department of National Health and Welfare should be instructed, at the same time, to develop an extensive and varied educational program to combat the widely held belief that the use of this drug is without risk. Every effort must be made to guard against any interpretation of Bill S-19 to the effect that this enlightened and necessary legislation has been passed because cannabis has been duly examined and found to be benign. Bill S-19 addresses itself to the legal half of this equation, and rightly so; but no one should thereupon conclude that this bill was really designed to be an easy transitional phase between the stringency of the Narcotic Control Act and the leniency of legalization.

It will now be for the clinicians, the scientists and the educators of this country to explain to the people that at this stage in our understanding there are strong reasons to believe that dependence on cannabis is highly dangerous to both physical and mental health.

The Chairman: Thank you, Dr. Malcolm.

Senator Laird: Thank you very much, Dr. Malcolm. You have made your position very plain, and that, of course, is what we are most anxious to have the benefit of—views of people like yourself. The one thing you do object to is that there should be any excuse for the importation of this drug. I suppose you would suggest that there be an absolute penalty imposed for importation of for having in possession?

Dr. Malcolm: That is my feeling, senator. I really cannot speak about the legal matters involved here, but that is my feeling. I think importing this drug is something that the people can be told is against the law and that they might well be expected to abide by that rule.

Senator Prowse: Even with respect to a very small amount?

Dr. Malcolm: That would be my feeling, yes. I see no reason for importing this drug at all.

Senator Prowse: Do you feel that somebody going down to the United States for a trip and then coming back into Canada, and being found to have one joint, should be treated differently from what he would be if he were found walking the streets of Toronto with one joint in his possession?

Dr. Malcolm: I really do not see the difference there, and I do not know how that is going to be resolved.

Senator Prowse: As I understand the law, that is what is involved.

Dr. Malcolm: I got the impression from reading Bill S-19 that this was probably going to cause any kind of law-enforcement agency incalculable difficulties. I felt that virtually everyone found in possession of the material at an airport could say, "This is for my own use, and it is for my own use over the following ten-year period." I thought that section might be clarified to exclude the possibility of that kind of defence. Personally I feel that if someone were found with an extremely small trace of the material on him, it would not be particularly just to apply to him the same stringencies that would obviously apply to somebody who had ten pounds. I cannot say what the solution to that problem is, but I imagine there will be great problems in enforcement if you allow that part to go through.

Senator Prowse: On ordinary possession, if I am found with five pounds, although I might say that that was for my own use over the next ten years, the courts could find that that was simple possession. My chances of getting away with that would be absolutely nil. I would think that persons coming into the country would not receive any more generous treatment from the courts in their interpretation as to what constitutes an amount for a person's own use than would the person already here. He might even be treated with greater suspicion.

Dr. Malcolm: If that should turn out to be the case and if it could be confidently predicted to be so, then I would not be too unhappy about it.

Senator Prowse: You and the RCMP agree on that. You are among friends. I think the people who framed the bill have confidence that the people administering the law, that is to say, the judges, would be expected to use reasonable common sense in their interpretation of it, and I think that is the reason it reads as it does in the clause you referred to—and, as a matter of fact, the RCMP do, too.

Senator Laird: As a supplementary to that, I presume that you do not favour the Oregon experiment of a breakaway point at one ounce for constituting a charge of mere possession.

Dr. Malcolm: I do not have enough information on the Oregon situation. I know that the experiment there has proceeded for about a year, and I know that there are great differences of opinion within Oregon itself as to the advantage gained by that State. I think that for me one of the greatest problems there must be to know how to define what is legal and I think that the introduction of hashish oil has greatly complicated Oregon's problems. That is my feeling, at any rate. We will be watching Oregon with great interest to see what does happen there. I am aware of people on both sides of this argument who speak very strongly about it, and I really don't know what to think about Oregon, except that I tend to be very suspicious of it.

Senator Laird: I was thinking that perhaps this breakaway point of one ounce might be a good idea to import into section 58(2) so far as the matter of importation is concerned. What do you think?

Dr. Malcolm: Perhaps that would be so. I don't know.

Senator Prowse: Would you feel that there should be some provision in here to provide for a differentiation as between marihuana and hash and hash oil?

Dr. Malcolm: Perhaps, except that in the future the confusions will only get greater. Hash oil is a highly concentrated form of this material and it can be transported rather easily and can be sealed and might be rather difficult to assay to find out the actual THC content. It is theoretically possible to declare that any material containing 5 per cent or less would be in one category while any material containing 5 per cent or more would be in another category, but I think it would be very difficult to do this.

Senator Godfrey: As Senator Prowse has explained, your position is really the same as that of the RCMP, but they did point out that in fact under the present act if somebody was found bringing in just a few joints he would not be charged with importation; he would be charged with simple possession. That means in fact that the police or the crown prosecutor is making the decision as to whether the man was bringing it in for his own use or for trafficking. What the bill is saying is that really the judges should make that decision and not the police.

Senator Prowse: That is correct.

Senator Godfrey: Of course, the person has one more chance before the judge because I presume they would proceed by way of summary conviction rather than by way of indictment when they think it is for his own use and not for trafficking. It is not put into the sole hands of the police to make the decision as to whether the man or woman is to go to jail for seven years—as it is under the present law.

Dr. Malcolm: If that is the way it is, I like that.

Senator Godfrey: You trust the police more than the judge?

Dr. Malcolm: No, I prefer that the judge should decide that, and if that is the burden of this law, then I like it.

The Chairman: Are there any further questions? Thank you very much, Dr. Malcolm, for a very interesting brief. I thank you on my own behalf and on behalf of the committee.

I am going to ask the members of the committee to stay for a short business session in camera. For the record, I should like to state that the next meeting of the committee

on this bill will be held on Tuesday, March 4, both morning and afternoon. The morning session will consist of a presentation by a group of Toronto defence lawyers, and at the afternoon session we will have representatives of the Quebec Department of Justice and the Quebec Bar.

Members of the committee will also have noted that we have a meeting tomorrow to deal with another piece of legislation. That meeting will be at 3.30, when we expect to hear the honourable Mr. Buchanan, Minister of Indian and Northern Affairs. It will be held in Room 356-S. We have permission from the Senate to sit at the same time as the Senate is sitting.

The committee adjourned.

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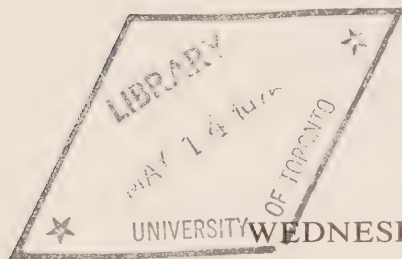
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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*



Issue No. 10

WEDNESDAY, FEBRUARY 26, 1975

**Second and Final Proceedings on Bill S-20, intituled:
“An Act to amend the Territorial Lands Act”**

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Langlois
Buckwold	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Sullivan
Lang	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 11, 1974:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Buckwold, seconded by the Honourable Senator Giguère, for the second reading of the Bill S-20, intituled: "An Act to amend the Territorial Lands Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

February 26, 1975.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 3:30 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Buckwold, Croll, Fergusson, Flynn, Godfrey, Laird, Neiman, Prowse and Quart. (10)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee resumed its examination of Bill S-20, intituled: "An Act to amend the Territorial Lands Act".

The Honourable Judd Buchanan, Minister of Indian and Northern Affairs, was heard in explanation of the Bill.

The Committee also heard Mr. Bernard Fournier, Acting Chief of Liaison, Advisory Committee for Northern Development, Department of Indian and Northern Affairs.

Upon motion of the Honourable Senator Flynn, it was *Resolved* to amend the Bill as follows:

Page 1: In the French version strike out lines 7 and 8 and substitute therefor the following:

"24. (1) Un fonctionnaire employé du gouvernement du Canada, ou en relevant, ne peut, directe-"

On motion duly put it was *Resolved* to report the said Bill as amended.

At 4:00 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Wednesday, February 26, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill S-20, intituled: "An Act to amend the Territorial Lands Act", has in obedience to the order of reference of December 11, 1974, examined the said Bill and now reports the same with the following amendment:

Page 1: In the French version strike out lines 7 and 8 and substitute therefor the following:

"24. (1) Un fonctionnaire ou employé du gouvernement du Canada, ou en relevant, ne peut, directe—"

Respectfully submitted.

H. Carl Goldenberg,
Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, February 26, 1975

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-20, to amend the Territorial Lands Act, met this day at 3.30 p.m. to give further consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are this afternoon resuming consideration of Bill S-20, an act to amend the Territorial Lands Act. The committee met on December 12 last year, when it was decided to invite the minister to give some clarification. The Honourable Judd Buchanan, the Minister of Indian Affairs and Northern Development, is here with a member of his department.

How shall we proceed? In December last an explanation of the bill was given by Mr. Yates, the Director of Northern Policy and Program Planning Branch of the department.

Senator Croll: What is the problem?

The Chairman: Do you want to say anything, Mr. Minister?

The Honourable Judd Buchanan, Minister of Indian Affairs and Northern Development: Do you want me to make a preliminary statement? I have a few remarks I could make, but I do not know that they are really necessary.

The Chairman: If you made a few remarks by way of background information it might be helpful.

Senator Prowse: The concern I raised was that we had something similar to this in Alberta, which arose with respect to civil servants acquiring interests in crown lands as they applied particularly to oil rights there. There was a limitation there. This was made necessary there because, as you may recall, anybody who carries on any drilling is required to report within 30 days, I think it is, the results of that drilling progressively as they go on to the department, where they keep the lists. That information does not become public information until after a period of, I think, twelve months. In other words, there is a different period there.

It can be appreciated that somebody could make a very substantial oil find, news of which they would not release at the time, for their own purposes, perhaps because they do not have a market and a whole lot of other reasons. This is important information that companies try to keep from one another, as well as everyone else. However, a person who was charged with just filing this information could take advantage of it. We thought that they should be limited. They were not allowed to buy shares in a company which was listed on the stock exchange.

I recall that at that time I tried to suggest that this limitation ought to apply to ministers of the Crown and

members of their families as well. I was unsuccessful at that time in that attempt. There seemed to be such a complete prohibition here. Suppose I were to go into the Northwest Territories as a civil servant—which, of course, I cannot—and wanted to buy property for a home. Suppose a member of my family was a civil servant in the Northwest Territories and I was in business and wanted to buy land for business purposes there, he might have an indirect interest, in that he could expect to inherit it from me. When you get into the indirect you get pretty damned indirect.

I was wondering just precisely how you intended to do it, what provision you intended to make, whether it would be in a general way or by a specific exception to cover an individual who had a completely legitimate interest, and not the type of interest which I referred to at first. With that background, perhaps you could tell me where this is intended to apply and whether my fears were unfounded when I thought I saw something that went much further than the act intended to go.

Incidentally, I do have some property in the area, to the extent that my wife has 100 shares of Oil Patch that I think own some property in the Yukon. They have a warehouse on it. She also has a hundred shares of Siebens Oil. At the present time both of those properties are well below what she paid for them about 6 years ago.

The Chairman: You may be subject to a \$100-a-day penalty since the day of your appointment to the Senate, Senator Prowse!

Senator Prowse: We are not covered on this, but in a case like this I wonder whether we should not be, if somebody else is. That is the type of thing I had in mind. These were both, of course, through James Richardson and Sons and were just another form of investment.

The Chairman: We will ask the minister for clarification.

The Honourable Judd Buchanan, Minister of Indian Affairs and Northern Development: Basically, you were touching initially on the question of to whom does it apply.

Senator Prowse: Yes.

Hon. Mr. Buchanan: It is my understanding that the phrase “employees of the Government of Canada” includes members of the Public Service of Canada, members of crown corporations, members of bodies such as the National Energy Board, the Canadian Radio and Television Commission, and the Canadian Transport Commission. It does not apply to members of the Senate or to members of the House of Commons. So that was the first area you were touching on.

The purpose of this is to get round a difficulty in which individuals could own shares indirectly because they might own life insurance and the life insurance company

in turn could own shares. There was grave concern that individuals could be in a position where they were in conflict. There was a possibility that they would be subjected to quite severe penalties. The idea was to remove that restriction upon them and yet maintain the one vis-à-vis land.

It would still require employees of the Government of Canada who purchased territorial land, regardless of whether it was for residential or recreational use, to obtain an individual, authorizing Order in Council.

Senator Prowse: I see.

Hon. Mr. Buchanan: So, originally, it applied to both. Now, in fact, it is my understanding that they did not get any applications under the holding of shares, but that, really, all the applications they had related to land primarily for homes and cottages. The purpose of this legislation is to remove that anomaly, which currently puts territorial civil servants, or public servants generally, in a situation where, totally unknown to them, they could be in violation of the act.

Senator Prowse: That was my concern.

Hon. Mr. Buchanan: That is the intent. The idea is to remove that particular restriction but to maintain the restriction relating to special action Orders in Council required for land. That still does not free them from the general conflict of interest guidelines which come under the jurisdiction of my colleague, the President of the Treasury Board, although I am not familiar with the details.

Senator Prowse: In terms of the 100 shares I was referring to, Siebens would have about three million shares outstanding and the other company would have perhaps a million shares outstanding. I think Oil Patch is one of the companies that are pretty small. At any rate, 100 shares in there is pretty miniscule, as you can appreciate.

Hon. Mr. Buchanan: It is my understanding that as far as shares are concerned we are, in fact, removing this restriction, but that the conflict of interest guidelines applicable to them under the jurisdiction of the President of the Treasury Board will still apply. The bill does not propose to exempt these people, but proposes only to bring our legislation more in line.

Senator Prowse: And make it more reasonable.

Hon. Mr. Buchanan: Yes.

Senator Prowse: And yet to protect you so that there can be no case of a person being unfairly accused of having taken advantage.

Hon. Mr. Buchanan: That is right. I think, as you know, the penalties are quite severe under section 24(2) of the act. It lays some fairly severe penalties. As I say, we are concerned about the situation where a person could buy a life insurance contract and, as part of the investment of that company, could own shares in, for example, Imperial Oil or other companies, and that individual could find himself in trouble.

Senator Prowse: And mutual funds, too, I suppose.

Hon. Mr. Buchanan: Yes.

Senator Prowse: In a company such as Siebens, where they have all kinds of interlocking land trading deals with other oil companies, I doubt very much if the president of

the company would be aware at any particular time, without special briefing, of just what the company's interests are.

Hon. Mr. Buchanan: But it maintains the requirements as far as interests in land are concerned.

Senator Flynn: What is the Order in Council or what are the Orders in Council presently governing this problem under the present section 24—without reference to the bill before us? Are there any general rules? Would you accept all companies, the shares of which are quoted on the exchange?

Hon. Mr. Buchanan: I think it is somewhat similar to the situation Senator Prowse was referring to in Alberta. I believe it is publicly listed companies.

Senator Flynn: Have you the next of that Order in Council?

Hon. Mr. Buchanan: For the purpose of your record, let me introduce Mr. Bernard R. Fournier, Acting Chief of Liaison in the Advisory Committee for Northern Development.

Mr. Bernard R. Fournier, Acting Chief of Liaison, Advisory Committee for Northern Development: In answer to your question, Senator Flynn, not in final form yet, no.

Senator Flynn: I am speaking of the one presently in force, where it says, "Except by or under the authority of an order of the Governor in Council."

Hon. Mr. Buchanan: I do not have a copy of that Order in Council here, Senator Flynn. As a matter of fact, it is something about which I have been communicating with my colleague, the President of the Treasury Board, because he would like to see some modifications apparently in the form of the Order in Council which has been used so that he would feel more content with it so far as his particular area of responsibility and jurisdiction is concerned. We can secure a copy of that for you, but I am sorry I do not have one here.

Senator Flynn: I was trying to figure out what this bill is going to change.

Hon. Mr. Buchanan: Basically, the change is that it removes the limitations or restrictions relating to the ownership of shares in mutual funds, in companies, and so on, for which up to now the individuals, technically, should have been getting individual authorizing Orders in Council relating to these share ownerships. It applied to that and to interests in land. This bill proposes to remove the restrictions so far as the interest in shares is concerned but not the interest in land. As I said, separate and distinct from this, this relates only to the Northwest Territories and the Yukon.

The other conflict of interest guidelines, and so on, that are in place under the jurisdiction of the President of the Treasury Board still apply. This does not propose to exempt public servants from those at all.

Senator Flynn: It appears to some of us, Mr. Minister, that this was a problem which should not be dealt with on the basis of the Territorial Lands Act but should be dealt with generally across the board.

Hon. Mr. Buchanan: Conflict of interest?

Senator Flynn: Concerning all the public employees and concerning all departments of government.

Hon. Mr. Buchanan: That could be true, but, basically, of course, our jurisdiction—the federal lands—applies only to the Northwest Territories and to the Yukon. I am not certain what the policy of the provinces is in that regard.

Senator Flynn: I am speaking of the federal government. I can understand that you, as Minister of Indian Affairs and Northern Development, would want to solve your own problem.

Hon. Mr. Buchanan: I think I am making good headway, if I am able to do that.

Senator Flynn: Yes, it is better than nothing. I would think that if you had a problem that might be repeated in other departments or at other levels, the way to deal with it would be by overall legislation so that you would not have to look into each act in order to find out whether something is permissible or not.

Hon. Mr. Buchanan: Of course, it is only in the Yukon and the Northwest Territories where the federal government controls the crown land, in effect. I mean, they do own some minor parcels south of the 60th parallel, but basically, south of 60, the crown land is in the bailiwick of the various provincial governments; so this bill really does deal with the area of Canada, vis-à-vis land, where the federal government does have the jurisdiction.

Senator Flynn: I agree that this could be more frequent, but the government owns land all across the country, be it for a post office, or anything like that. Sometimes it disposes of this property, and the company may acquire a piece of property of that kind. There would then be a similar problem.

Hon. Mr. Buchanan: I presume that there we would get involved with the procedures under, and jurisdiction of, the Crown Assets Disposal Corporation. I am not sure whether federal servants can buy in those circumstances.

Senator Flynn: Even at that, I do not know. You may be right, but that is where I come back to my point: Why not have general rules?

Hon. Mr. Buchanan: My point was, Mr. Chairman, that again I do not profess to have the requisite expertise. I would suspect that those rules might will be in place right now, through the legislation governing the Crown Assets Disposal Corporation. This is just pure guesswork on my part, but I would suspect that public servants cannot purchase from the Crown Assets Disposal Corporation. I may be all wet when I say that, though. In other words, if crown lands were being disposed of, they must go to CADC.

Senator Flynn: I think there are some exceptions. However, I think, generally speaking, you are right.

Senator Neiman: Mr. Chairman, I am looking at the proposed section 24(1), and the present one under the explanatory note, and although I may be missing something, the only difference I see is that the old section says: "or company purchasing or acquiring such lands", whereas the new section simply omits the word "company" and puts in "that purchases, acquires or holds". To me, those seem to be the only changes as between the two sections there, and I do not see that that quite makes the difference. Is it just the omission of subsection (2) of the present act

that covers the explanation that the minister has now given us?

Hon. Mr. Buchanan: We have added also subsection (2). Is that what you mean? I do not, again, profess to have any expertise, but I understand subsection (2), which has been added, in fact makes the distinction.

Senator Neiman: I should have said that, but I did not quite understand that as explaining this difference, that is, making it conform simply to lands, and omitting any reference to shares; because subsection (2) simply says what the Governor in Council may prescribe by order.

Hon. Mr. Buchanan: Well, this was a subject of some debate when the bill was being put together. There was considerable input from the people from Treasury Board and Finance, and I know that after much discussion and hauling the thing back and forth, frankly, we did have to send it back for redrafting. Then they told me, and they were satisfied, that this did in fact accomplish what I have just indicated to you that it did accomplish. That sounds like gobbledygook, does it not?

Senator Neiman: I frankly cannot see that, because both of them refer to "such lands". In each case it says "or any interest therein". Perhaps that broad statement is meant to cover "or other interest"; but I do not see where this distinction you are talking about has been made.

Senator Buckwold: Mr. Chairman, maybe I can muddy the waters a bit!

Senator Flynn: I am quite sure you could.

Senator Buckwold: I was the sponsor of the bill, so I did talk with the officials of the department as best I could.

The Chairman: Well, go ahead and muddy the waters.

Senator Buckwold: I do not think they could be any more muddy, because it was indeed hard for me to understand. The first thing I said to them was, "Why did you take out the word 'company'?" The answer I got—and I happen to have a note here—was that the word company was a redundancy; that it is not possible, according to the Department of Justice, to be a legal company without being a corporation, so they took out the word "company". That is one minor thing.

Senator Neiman: We can follow that much.

Senator Buckwold: The second thing is that in the previous act we had everything lumped together, as we do here, insofar as land, securities, shares, et cetera, are concerned. We still have that, but it is affected by subsection (2), which takes one aspect of it and says that insofar as the land is concerned, you have to go through these procedures.

Senator Neiman: And there is nothing in this bill that refers to this section. There must be another section that deals with shares or other interests.

Senator Buckwold: Subsection (2) is the one on shares. I am sorry.

The Chairman: Yes. Any interest as a shareholder.

Senator Buckwold: I am sorry; I reversed the order.

Senator Flynn: But the words "or holds", which are added, would cover a lease, or would cover the occupation without any title.

Senator Prowse: Any interest—leasehold interest or any interest.

Senator Flynn: To hold the land. If your company goes north and occupies a piece of land without any permit, then that would be a violation.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: I do not usually intervene, Mr. Chairman—

Senator Flynn: Well, do.

Senator Laird: That is what we are paying you for.

Mr. Hopkins: And it is little enough.

The Chairman: Let us be relevant.

Mr. Hopkins: I think it says, “nor shall he be interested as shareholder or otherwise in any corporation”, et cetera. While I am on the subject, there is a typographical error there. It should be, “that purchases”. Now, that does not need an amendment. I will take care of that in my spare time, if I can find any, after dealing with your constitutional problems, Senator Flynn. I may also say that there is a small amendment to the French version that will have to be made.

Senator Flynn: Yes.

Mr. Hopkins: Otherwise I am satisfied with the bill.

Hon. Mr. Buchanan: I was just going to say that in the other version, reading it as a layman, I found it, frankly, much clearer, and its intent much more obvious; but apparently, as I say, this tripped up when Justice got hold of it, and they felt that this was, from their point of view, a better wording technically. This was really the reason that it comes forth in this form. As I say, however, it is my clear understanding that in fact it accomplished what I indicated earlier was its purpose.

Senator Buckwold: I was going to say that there is one other change insofar as the punitive aspect of it is concerned, and it is fairly significant. Up until now you could be dismissed for any violation. Under this, upon conviction, you would be fined up to a maximum of, I believe, \$500 or six months, or both.

Hon. Mr. Buchanan: They still felt it was a pretty heavy penalty.

Senator Buckwold: It seemed to me that it was correct to eliminate the dismissal as part of the act.

Senator Prowse: There also would be a civil action for any profit that was realized, of course.

Hon. Mr. Buchanan: From the transaction?

Senator Prowse: There would be a civil action in that regard.

Senator Flynn: It takes away the summary dismissal.

Senator Buckwold: Yes.

Senator Flynn: Do I understand from Mr. Hopkins that my interpretation of “holds such lands” would not cover the case of a lease, or occupation without any special title?

Mr. Hopkins: You did not understand me well.

Senator Flynn: That is why I am asking the question.

Mr. Hopkins: I very seldom disagree with Senator Flynn, as he knows.

Senator Flynn: I wanted to be sure that you were not disagreeing.

Senator Godfrey: “... or any interest therein” means a lease.

Senator Flynn: That would cover a lease?

The Chairman: “... any interest therein”, as Senator Godfrey says, would cover a lease.

Senator Godfrey: I thought what they were trying to do was to say that not only should you not have an interest in a corporation that a purchaser acquires, but you cannot already hold land—you do not buy; and all they have done through subsection (2) is permit general Orders in Council to cover a vast class of corporations instead of specific ones.

Hon. Mr. Buchanan: Rather than the individual.

Senator Godfrey: It is clear to me as well.

Senator Prowse: Any person with a portfolio of shares of any kind could find himself in breach of that original provision unless there was a specific exemption for him. In other words, there could be a lot of people who would find themselves in a real jackpot. For example, I could say to my wife, “Sell those shares and let us get out of here real quick,” except that she now takes a capital loss. This would be nice for tax purposes, except that it is her capital loss and not mine. If she gets a capital gain, I have to pay the tax on it, but a capital loss I cannot take.

Hon. Mr. Buchanan: I believe I may have to ask my brother Turner to come back here to discuss all these problems.

Senator Flynn: Perhaps we are not accomplishing anything substantial here, but we are not worsening the situation either.

Hon. Mr. Buchanan: That is damning it with faint praise.

The Chairman: You are then prepared to accept it with that consolation?

Senator Flynn: It will not be the first time, Mr. Chairman.

The Chairman: There is one point that Mr. Hopkins has raised. In the English version of clause 24.(1) it reads:

24.(1) No officer or employee of or under the Government of Canada...

While the French version reads:

24.(1) Un fonctionnaire employé du gouvernement du Canada...

That should read:

Un fonctionnaire ou employé du gouvernement du Canada ou en relevant...

Is that agreed, honourable senators?

Hon. Senators: Agreed.

Mr. Hopkins: I should like to say to Senator Laird that I should receive the 7 per cent increase for that.

Senator Laird: I think you should have it—any person so truly bilingual!

The Chairman: Do you move that amendment, Senator Flynn?

Senator Flynn: I so move.

The Chairman: Shall I report the bill, as amended in the French version?

Senator Prowse: While we are on the English version, I am having a little trouble down here where it says "... in any corporation that purchase, acquires or holds ...".

Mr. Hopkins: I have mentioned that to the chairman and that can be corrected without the necessity of a formal amendment because it is simply a typographical error.

The Chairman: Will a senator then move that I report the bill, as amended in the French version?

Senator Godfrey: I so move.

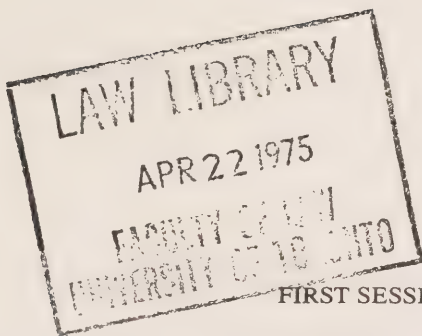
The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The committee adjourned.

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FIRST SESSION —THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 11

TUESDAY, MARCH 4, 1975

Sixth proceedings on Bill S-19, intituled:

**“An Act to amend the Food and Drugs Act, the Narcotic Control Act
and the Criminal Code”**

(Witnesses and Appendix: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Langlois
Buckwold	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Sullivan
Lang	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Senator Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

March 4, 1975.

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Buckwold, Croll, Fergusson, Godfrey, Laird, Langlois, McGrand, McIlraith, Neiman, Prowse, Quart and Robichaud. (14)

Present but not of the Committee: The Honourable Senator Lafond.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee resumed its examination of Bill S-19, intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

The following witnesses, members of the Ontario Bar, were heard in explanation of the Bill:

Mr. Clayton Ruby, Barrister, Toronto;

Mr. John Rosen, Barrister, Toronto;

Mr. Harold J. Levy, Barrister, Toronto;

Mr. Leonard Wise, Barrister, Toronto.

At 1:05 p.m. the Committee adjourned until 2:00 p.m.

At 2:10 p.m. the Committee resumed.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Buckwold, Croll, Fergusson, Flynn, Godfrey, Laird, Langlois, McGrand, McIlraith, Neiman, Prowse, Quart and Robichaud. (15)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses, representing the Quebec Bar Association, were heard by the Committee:

Mr. Michel Robert, Q.C., President;

Mrs. Micheline Audette-Filion, Director of Research;

Mr. Serge Ménard, Montreal;

Mr. Yvon Roberge, Sherbrooke.

On Motion of the Honourable Senator Asselin it was *Resolved* to include the "Recommendations of the Quebec Bar Association" in the day's proceedings. It is printed as the "Appendix".

The Committee also heard Mr. Jean-François Dionne, Crown Prosecutor of Quebec, appearing on behalf of the Department of Justice of the Province of Quebec.

At 5:15 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, March 4, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 11.00 a.m. to give further consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

[Text]

The Chairman: Honourable senators, before we begin our formal proceedings, as you are aware, the televising of the hearings today is an experiment restricted to this committee and to its study of the particular bill before us. It will be for the Senate to decide how it affects our hearings and where we go from here. I hope it will not disturb our hearings.

We now continue our study of Bill S-19. Our witnesses today, both this morning and this afternoon, are lawyers. This morning we have some members of the Ontario Bar, who are defence counsel in criminal cases. I will ask Mr. Clayton Ruby, who is on my right, to identify the witnesses with him, to set out their qualifications in this particular field and to present the brief.

Senator Asselin: Before we start hearing the witnesses, Mr. Chairman, once again I wish to raise a point of order. We received the briefs too late and they should be in both languages.

The Chairman: As far as receiving the briefs too late is concerned, Senator Asselin, every one of the witnesses thus far has told me that they would have sent them but for the mail situation, the strike. As a matter of fact, Toronto is closed down again today and Mr. Ruby and his associates have apologized for not having been able to mail their brief.

As far as the translation is concerned, I agree that it would be far better if each brief could be translated. However, in my opinion we can only expect that with respect to briefs submitted by federal government officials.

Mr. Clayton Ruby, Barrister, Toronto: Mr. Chairman and honourable senators, the submissions that we have to make are on behalf of a group of Toronto lawyers who practise criminal law and spend a great deal of their time defending drug cases. It is a limited perspective, but one which we hope will be of assistance to you. Our presentation today will be by myself and, on my right, Mr. Leonard Wise; on the far right, Mr. John Rosen and, sitting in an extra chair, last but not least, Mr. Harold J. Levy. Other persons who have assisted in preparing the brief are Sidney B. Linden of Toronto, Alan D. Levy, Avrum Posluns, Gary Snider and Stephen J. Headford. Subject to your approval, I propose to read the submission upon which we have agreed and then make our group available for questioning.

As defence counsel, we collectively devote a great deal of time to the defence of persons who are accused of having committed various criminal offences. Our practices are predominantly confined to the municipality of Metropolitan Toronto, although, from time to time, some of us have been involved in matters outside the Judicial District of York. Collectively, we have defended many, many persons charged with having committed offences contrary to the Criminal Code of Canada, the Narcotic Control Act and the Food and Drugs Act at each level of the courts, ranging from the provincial courts to the Supreme Court of Canada. Our daily practice necessarily brings us into contact with at least one aspect of the so-called "drug culture". We have learned something about our clients' way of living, and have come into contact with their friends and families. When making presentations as to sentence, after conviction, our role becomes one of interpreting the accused person's values, habits and way of living into language that the court can understand. If we are to do this properly, we must know our clients and the environment from which they come, as well as the courts and the law which governs. As members of an old and honourable profession, as officers of the court and as private citizens of this country, we are conscious of the need for legislation that deals effectively with the problems of our society. Accordingly, we are interested in Bill S-19 as well as the work of this committee, and we make the following submissions for your consideration. We believe that Bill S-19 is a significant move in the right direction. Accordingly, we support the bill and the policy which it represents.

In commenting on the bill, there are some points which we would like to make particularly. First, with regard to the lack of jail sentences for simple possession of cannabis, except in default of payment of a fine, we believe it very important that the bill eliminate the possibility of a jail sentence for persons convicted of possessing cannabis. Although this has been the practice to a large extent in Metropolitan Toronto for some time, there have been examples of wide disparity and substantial variation of sentences for similar fact situations involving similar types of accused persons. There have been examples of variation from rural areas to urban areas and from judge to judge which do not seem warranted by the circumstances. This particular amendment will go a long way, in our submission, to providing equal justice across the country.

With regard to the removal of the mandatory minimum prison sentence for importing or exporting of cannabis where the convicted person can prove that he imported or exported for his own consumption only, it is our submission quite frankly that the mandatory minimum sentence for importing cannabis has long been unrealistic. One could equally substitute words such as "harsh" and "brutal." The removal of the mandatory minimum for importing—the minimum is seven years, as it stands presently—

where the Crown elects to proceed summarily, will give the court the discretion with regard to sentencing that it ought to have. Clearly, in some cases, where there is technical importation, there is no merit in the imposition of a substantial jail sentence and we applaud this particular amendment. Similarly, reducing the minimum to three years where the Crown elects to proceed by way of indictment is an improvement. Further, the accused will have the opportunity of demonstrating that the importation was for personal use and thereby avoid the statutory minimum. This particular amendment is clearly an effort to strike a balance between society's extreme condemnation of the commercial exploiter on the one hand and its legitimate, although lesser concern, for the simple user of marihuana on the other.

Further, we approve granting the Crown the option of proceeding summarily or by indictment as circumstances warrant, in offences involving possession for the purpose of trafficking. This option has traditionally been open to the Crown in a wide range of criminal and drug related offences. It is a well established device at this point in time. Experience has demonstrated that it enables the Crown to distinguish between the less significant matters to be dealt with expeditiously by way of summary procedure, and the more significant matters to be prosecuted by way of indictment.

I might mention that the principal use of that is in getting rid of the incredible backlogs of cases that are untried and unheard in the major cities in Canada, particularly in Toronto. Because of the broad definition of trafficking in the two statutes, many factual situations amounting to technical trafficking but not amounting to a commercial enterprise type of trafficking, would no doubt be proceeded with summarily. The great volume of technical trafficking situations could thereby be disposed of effectively and expeditiously at the provincial court level, thus enabling the higher courts to deal with the more serious offences.

Similarly, removing cannabis from the Narcotic Control Act and placing it within the food and Drugs Act is a useful and progressive step. There are many situations wherein adverse consequences result from a conviction of an offence contrary to the Narcotic Control Act, but which do not automatically result from a conviction of an offence contrary to the Food and Drugs Act. I have specifically in mind the problems raised in the Immigration Act, wherein a person becomes subject to deportation if he has been convicted of an offence contrary to the Narcotic Control Act, but he might not be subject to the same consequences if he or she were convicted of an offence under the Food and Drugs Act. The theory is that the same stigma of criminality does not attach to a conviction under the Food and Drugs Act as it does under the Narcotic Control Act. Regarding cannabis as a drug, and not as a narcotic, is more appropriate in today's society, having regard for the widespread information that is available about cannabis.

The fact is that the majority of people who are knowledgeable simply do not accept that this is a narcotic, and the law comes into line with what people correctly believe. Our submission is that these amendments, while perhaps not solving the problems, at least ameliorate some of them. Valuable resources, such as police, lawyers and courts will be able to deal more effectively with the larger problems presented by the trafficker and by far more damaging substances than cannabis. We wish to emphasize that although we support the approach of the bill in its present

form, we would have preferred to see the bill deal with additional matters.

I will now turn to those questions. First, we would have preferred to see the bill eliminate minimum penalties completely. With the exception of non-capital or capital murder, and with second or subsequent offences of impaired driving, for some reason, there are no minimum penalties provided in the Criminal Code of Canada. We do not think that minimum penalties are warranted in the narcotic or drug related statutes either. The court ought not to be hampered by minimum statutory requirements, provided that it has sufficient discretion and latitude to impose whatever sentence it deems proper. There are obviously cases where long jail sentences are required and the appellate courts have insisted on their imposition. The appellate courts, I might say, in Vancouver, British Columbia, and in Ontario, have been very clear that for significant trafficking—for example, heroin—nothing less than a life sentence will do. Similarly, in trafficking or manufacturing of speed, and manufacturing amphetamines, nothing less than the maximum penalty of 10 years will do. They impose this regularly. There is no doubt that courts have got the message. For some kinds of drug abuse, the maximum and very serious penalties are and ought to be imposed. But we do not like situations wherein the court is bound to impose a long jail sentence—and three years is a long time—because of the minimum statutory requirement, regardless of the particular circumstances of the case, which may make such a sentence inappropriate and unjust. The essence of this submission is that justice has got to be individual, and if the judge has no longer the power to make the sentence individual, there is something wrong with the system of justice. We should not fall into that trap.

Secondly, it is our submission that the section dealing with cultivation of cannabis should be eliminated completely. Cultivation need not be treated separately from possession or possession for the purpose of trafficking. If the amount cultivated is small, and the circumstances suggest personal use, a charge of simple possession would suffice. Conversely, if the amount of cannabis cultivated is larger, or circumstances suggest other use than personal use, a charge of possession for the purpose of trafficking would be appropriate. We fail to see the need for a separate section dealing with cultivation. Quantity and circumstances alone should suggest whether a charge be laid for simple possession on the one hand, or possession for the purpose of trafficking on the other. I might say as an aside that the only real use to which that charge will be put, in my past experience and using that as a base, is for police overcharging. The police like to lay more charges than they will eventually get a conviction on because it helps to encourage guilty pleas to one of them. At the same time, it is good for defence counsel, because he can tell his client, "I did a great thing for you, I got that charge dropped." But it was an unnecessary charge in the beginning. It makes everyone look good, it helps certain interests, but it is not an aid to the administration of justice.

Thirdly, we respectfully submit that the bill does not reflect a re-examination of the definition of trafficking. The term is presently defined in such a way as to include within its ambit types of circumstances which are extremely far removed from each other. We recommend a more precise and restricted definition, focusing on the commercial enterprise trafficker and specifically eliminate the "giving" and "sharing" aspects of the definition. We

think the word "give" should be eliminated from that definition entirely.

Fourthly, we respectfully suggest that wherever the penalty prescribed by the statute provides for possible jail sentence, the accused person ought to retain his right to have an election and be tried by a jury, as at present. I might say that this submission is in line with American constitutional law, for what it is worth, where the Constitution dictates the right of trial by jury option, where certain kinds of imprisonment are a possibility. We do not believe that it is an enlightened or desirable step to eliminate the jury option wherever jail is a possible consequence of conviction.

The bill in its present form provides that where the Crown elects to proceed summarily on a charge of possession for the purpose of trafficking, the possible penalty is a fine of up to \$1,000 or imprisonment for up to 18 months, or both. Our submission is that where an accused person could go to jail for up to 18 months, he ought to have the right to a trial by judge and jury and all of the safeguards that such a trial provides. We make this submission particularly because of the peculiar procedure provided for in the statute for charges involving possession for the purpose of trafficking where the onus is on the accused to establish that he was not in possession for the purpose of trafficking.

I hope at this point I do not lose those of you who are not lawyers, because this is a technical and very important feature of our legislation in this regard. The precise nature of the onus on the accused could be debated. Indeed, the Supreme Court of Canada, in *Regina v. Appleby*, came out with a number of different judgments, and if anyone is capable of understanding them, I am more than willing to be enlightened. They are extremely difficult to deal with. Trial judges have been having great difficulty in dealing with them. There is a concurring judgment of Mr. Justice Laskin's which, though it is a concurring judgment, does not seem to be one with the majority judgment, and neither of them make a great deal of sense.

The fact that such an onus nevertheless exists is clear. In such cases—and I am speaking here of practicality—it is almost always necessary for an accused person to testify under oath, thereby forfeiting his right to remain silent, a right that accrues in every other criminal trial. Accordingly, we submit that he should have the benefit of a preliminary hearing—that is, the opportunity before trial to examine the crown witnesses at a hearing where the crown has to establish a prima facie case—with full disclosure by the crown as to the nature of the allegations of trafficking against him, followed by a trial by judge and jury.

Fifthly, in our respectful submission, the provisions in the Narcotic Control Act and the Food and Drugs Act referring to or establishing this reverse onus procedure should be completely omitted. The reverse onus provisions are in conflict with practically every basic principle of criminal law. I might say, the basic principle is that there is an obligation on the part of the crown to prove guilt beyond a reasonable doubt. That is a very simple principle of law and one which was established, I submit, because of the very great danger of convicting an innocent person under any other standard and rule. Yet, here we have in our law a different standard, a much lower standard, one where the accused has to prove, on a balance of probabilities, that he is innocent. This is totally different from any other procedure we have, and my submission is that it is dangerous. In our respectful submission, this committee

ought to take advantage of this opportunity to examine the nature of a trial wherein this reverse onus is operative, and to suggest changes so as to bring these trials into line with ordinary criminal procedures.

Finally, we suggest for your consideration that if cannabis were simply moved from the Narcotic Control Act and placed in the same schedule as methamphetamine in the Food and Drugs Act, simple possession of cannabis as an offence would thereby be eliminated. The trafficking features would remain. That is part of our submission to this committee.

That concludes my opening remarks, Mr. Chairman, and, subject to your approval, I think we are all available for questions and, hopefully, argument.

The Chairman: Thank you, Mr. Ruby. I want to say to honourable senators that there are quite a number of questions and I hope each senator will try to limit himself or herself to five minutes on the first round. First I have Senator Laird, to be followed by Senator Buckwold.

Senator Laird: I will start my stopwatch. I have just two or three questions. First of all might I observe, Mr. Ruby, that you sound like a defence lawyer.

Mr. Ruby: Thank you.

Senator Laird: On the matter of shifting the onus, you have said it is a different procedure. In fact, this type of onus is placed on the accused in other statutes, such as, for example, the Customs Act, is it not?

Mr. Ruby: I believe it is in the Customs Act, senator, but in the Customs Act there is an unique situation, if we are thinking of the same sections, in that no one can really know several years after the event how a particular object got into Canada. That necessity is not present in the Narcotic Control Act. Intention is a fact like any other fact and can be inferred and proven like any other section of the Criminal Code. What I am saying is that there is really no difference between what needs to be proven here and what needs to be proven in a murder trial, or any other trial in Canada.

Senator Laird: You do agree, certainly, that marihuana, or any other derivative of cannabis sativa, does not do you any good and probably does harm. Do you agree with that?

Mr. Ruby: Senator, I am not qualified to make that assertion. There are medical witnesses who have been before the committee, I understand, who are better qualified than I to answer that question. But let us assume that for purposes of argument.

Senator Laird: I do not want to speak for the committee, but as a premise we accept the proposition that marihuana is harmful and, therefore, our job is to develop a bill which would minimize the use of marihuana.

Senator Godfrey: On a point of order, Mr. Chairman, we have already gone through that. I point out that that is not accepted. The only evidence we have is that excessive use of marihuana is dangerous. There is no evidence of there being any danger in the casual use of marihuana. We have to be precise.

Senator Laird: Well, Senator Godfrey makes the point that perhaps taking one or two joints is not particularly harmful, but the trouble is what that leads to, and certainly excessive use is very harmful. Would you agree with that?

Mr. Ruby: Well, let us assume that. You are asking me to agree to something of which I have no knowledge. I know alcohol is harmful.

Senator Laird: If the drug is harmful, why shouldn't the onus be shifted? We want to cut trafficking down.

Mr. Ruby: Because, senator, you are sending people to jail for lengthy periods of time, and it is part of our tradition that we do not do that. We do not attach criminal sanctions and send people to jail for lengthy periods of time without some assurance that the procedure is fair, and by "fair" we have traditionally meant, for many hundreds of years, that the crown proves guilt.

Senator Laird: Except in certain instances which are provided by statute, which others may bring to your attention.

Mr. Ruby: Certain rare instances.

Senator Laird: In any event, I must not take too much time. I notice, with interest, that you believe there should be some alleviation of the penalty for importation. Dr. Malcolm, who was previously with the Addiction Research Foundation, appeared before the committee, and the only thing he complained about was section 50(2). He thought it was a good bill, but he felt it was too easy for a person to bring in, say, six ounces of marihuana saying it was for his own use when, in fact, he or she might be a trafficker.

Mr. Ruby: From a lawyer's perspective, senator, let me say that simply saying, "It is for my own use," is not terribly effective, especially when the jury is told, "Just because he says it is for his own use, members of the jury, that does not mean you should acquit him. You must be convinced, on a balance of probabilities, that what he says is true." When the crown calls evidence to show, as it usually does, that anything more than three or four ounces, or anything packaged in more than three or four little bags, is evidence of trafficking or intention to sell, it is very difficult.

Senator Laird: Would you put a quantitative test on it, then?

Mr. Ruby: I would simply eliminate the minimum and then make the crown prove, beyond a reasonable doubt, that the man intended to traffic. If you come into Canada with 10 pounds of marihuana, the Crown very easily will prove that the intention is to traffic. It seems fairly clear. The danger, however, is the guy who is on a trip abroad—a summer vacation, perhaps—who gets the chance to buy for \$15 a quantity of grass which in Canada would be worth \$200. The Crown brings in that evidence saying, "This is a huge amount; it is for trafficking." Well, it only cost the guy \$15. The jury has to be convinced, on a balance of probabilities, that it really is for his own personal use. I think there is a severe danger of innocent persons being sent to jail under this particular legislation.

Senator Laird: That brings me to my final question. We have had evidence from the RCMP about amounts of this substance being brought abroad for a few hundred dollars which, after going through a lot of hands, finally ending up on the street, is worth, say, \$1 million. That, of course, makes it attractive for organized crime. Therefore, should we not make more severe the penalty as provided in this bill for trafficking in cannabis?

Mr. Ruby: Some of my colleagues might have some comments with respect to this, but my submission is that

the maximum penalty might well remain life imprisonment, and if there is a case of really serious commercial importation, our judges will not hesitate, I can assure you, to impose that maximum penalty. What bothers me is the minimum, where the judge has no discretion, because the minimum does not deter a serious drug trafficker; he knows he is going to get the maximum. It is the fellow who gets caught in the trap, where he has a borderline amount, who is the danger. Are there any comments from my colleagues?

Mr. Leonard Wise, Barrister, Toronto: Honourable senators, I want to speak on what Senator Laird asked. He mentioned that it is harmful or dangerous. When we are talking about cannabis, cannabis is inclusive of marihuana, hashish, marihuana branches, marihuana seeds, hashish oil and THC, which is the active ingredient in marihuana. All these are encompassed within the word "cannabis", if we only talk about cannabis and no other drugs.

The reason for all this, the reason for the changes in the law, is obviously the result of the Le Dain Commission and its final report, which summarizes practically everything we know about cannabis. Anyone reading the report will know that Dr. Andrew Malcolm is mentioned in that report, and the research workers at the Addiction Research Foundation are mentioned in it. I have a book here as well, as the senator does, which indicates that in fact cannabis is not a narcotic, but it has been in the Narcotic Control Act all these years. It has never been a narcotic; it does not fall within harmful narcotics like other drugs such as opium, cocaine and heroin. You use the word "harmful." Is cannabis harmful? Is it harmful to a person or harmful to society? In each case the answer is no.

Senator Godfrey says that we should talk about what most people in fact do. They use cannabis on a casual basis; they do not over use it. If you did over use it, even if you did abuse the drug cannabis, you would not suffer any great harm from it. There is no conclusive proof that you would suffer any great harm from the use of cannabis. In fact, no one has ever died from the use of cannabis. In fact, cannabis does not even come close to being as dangerous as alcohol or cigarettes. In fact, when I asked some doctors at the Addiction Research Foundation to name a drug less harmful than cannabis, one of them scratched his head for a minute and then said, "Caffeine." He found one drug less harmful than cannabis.

Senator Laird: I am afraid I will have to let somebody else pursue that. Frankly, I do not agree.

Senator Buckwold: Like Senator Laird, I have to make the general comment that I do not think your presentation today was completely objective. You are really just presenting a defence counsel point of view. From that angle I find that you are attempting to load the law in favour of those who are utilizing a drug. Having said that, there are two points I want to raise. One one I would object to what you said; the other I would like to explore more fully, because I agree with you, I believe.

I cannot agree that the cultivation of cannabis should be eliminated completely as an offence insofar as the clause is concerned. I gather that you would expect that to be dealt with under simple possession, if it were just a simple cultivation case. I suggest to you that the worst thing this country could do would be in fact tacitly to encourage the cultivation of marihuana by private people. Granted, you shake your heads and say, "Well, if they find it, the people are going to be charged with simple possession." I do not

agree, because they are not going to get everybody. You will find people starting to develop it and use it, and some of us are still concerned, in spite of the fact that you as defence counsel say that this is all right. I personally cannot support the removal of that aspect of it. Do you have some comment on that?

Mr. John Rosen, Barrister, Toronto: Honourable senators, with respect to cultivation, the man or woman who grows one plant of marihuana on the back porch is not going into the business of selling marihuana. That is a matter of simple possession, which can be dealt with as a charge of simple possession, and the charge remains. The man who is growing one or two acres on a farm is obviously intending to sell it. Therefore, the charge of possession for the purposes of trafficking would amply cover his possession and his culpability.

Senator Buckwold: Mr. Rosen, that is if he was caught doing it. I say to you that to make that kind of a change would be encouraging very large-scale home cultivation in very small quantities for personal use, and I suggest that this is not the kind of direction that some of us would like to see taken.

Mr. Rosen: It all depends where you want to direct the legislation. If you want to direct the legislation against the personal user, that is fine. If you want to direct the legislation against illicit trafficking in the criminality aspect, I submit to you that possession for the purpose is the ideal situation. That ties in with the last submission so far as concerns taking this out of this whole aspect of possession as an offence. For example, methamphetamine, which is also known as speed, and similar drugs, are on Schedule G of the Food and Drugs Act. Possession of methamphetamine, which is far more dangerous than possession of marihuana or any of the cannabis derivatives, is not an offence. You cannot say that the man who possesses cannabis seed is possessing it for his personal use. He may be possessing it for the purpose of distributing it or trafficking in it. That is where the criminality aspect comes in, because he is going to make an illicit profit. I submit that if you treat marihuana in the same way, that simple possession is not an offence but possession for the purpose, it is the same as the existing legislation with respect to drugs like speed. That is why cultivation is superfluous.

Senator Buckwold: That is your point of view. I suggest that by going what you suggest you would be encouraging very much the casual use of a drug that most of us would not like to see encouraged.

Mr. Rosen: This relates to Senator Laird's question. To say that a man with one bottle of beer in his hand is a potential alcoholic may be true, but you are not going to punish him for having one casual drink. The man who becomes the alcoholic should bear the brunt of society's anguish.

Senator Buckwold: If you are an alcoholic and start making your own liquor, you run into problems with the police.

Mr. Rosen: Because you are not paying the taxes.

Senator Buckwold: No, it is more than just not paying taxes. I think we have explored that. I do not think you have convinced me, so maybe we should move from the question of cultivation. The question of minimum sentences, though, does strike a responsive chord with me. I am not a lawyer and you can help me. From what I gather,

under the present law it seems that many magistrates and judges are giving an absolute discharge on the first appearance of a youngster who is charged with possession of marihuana. I am not talking about trafficking; I am talking about simple possession of a small quantity.

Mr. Ruby: That is correct.

Senator Buckwold: He appears before the magistrate and is given a discharge. Therefore, there is nothing in his record at that point.

Mr. Ruby: That is doubtful. The legislation on discharge and on criminal records is worded so badly that it is likely that he has a record. Certainly a record is kept by the police and the Crown, and is available for use in court. It is not a criminal record only in the sense that by statute it is deemed not to be a criminal record. It may hang around afterwards and may have many of the same consequences as a criminal record. Parliament did not go far enough. It is not a nothing; it is a something, and it is very much like a criminal record.

Senator Buckwold: Whatever it is, in my discussion with a very enlightened magistrate I find this to be his major concern with this particular aspect of the new law, that because of the minimum sentences required there is a criminal record given even for the most simple case. Would your suggestion of eliminating the so-called minimum solve that problem, so that on a very simple case the youngster would not be burdened with a criminal record?

Mr. Ruby: I believe it would. It would give the option to the judge of doing that.

Mr. Rosen: For example, as it now exists, with respect to possession for the purposes of trafficking, the Ontario Court of Appeal has said that the general rule—and it is only on rare exceptions that the rule does not apply—is that a jail term be imposed for a first offence for possession for the purposes of trafficking, notwithstanding the previous exemplary behaviour of the accused. In some cases they have taken steps back and amended that, but the point is that the courts are adequately able to deal with the proper case to stop this consort of trafficking.

On the other hand, you may have a person who brings in half an ounce, or even half a pound of marihuana for his personal use; the judge believes, on a guilty plea, for example, that it is for his personal use and that he imported it to take home. The judge says, "Unfortunately, parliament has decided that a statutory minimum must apply, and it is seven years in jail, and the parole board will be lenient with you." Then, of course, he is out of the judge's hands. That is what you have to stop, I submit.

Mr. Wise: As a matter of fact, senator, I can recall one case I had where the judge said his hands were tied. It was a sad case of a person bringing in a small amount of hashish from Jamaica to Toronto. He was arrested and convicted, and the judge said that it was a great shame that he had to do this, but his hands were tied. He had to subject the individual in front of him—a young man of good home, good reputation, with everything going for him, of good education and about to be married—to this sentence and his whole life was ruined. He had to send him away for seven years; he had no choice.

Senator Buckwold: You have gone into an area far beyond what I was talking about. I am talking about the fact that today youngsters are often given an absolute

discharge with no further criminal record, whatever the complications of it might be. I suggest that under the present act everyone will have, even for the simplest possession, a criminal record.

Mr. Rosen: For possession?

Senator Buckwold: Yes.

Mr. Rosen: I assume that even under the present act the magistrate will be allowed to impose a discharge for simple possession, where the provision for a first offence is a fine of up to \$500 or whatever. Even so, I think that our submission with respect to minimums applies to the three-year minimum. That is the only minimum.

Senator Croll: Assuming there is no minimum and the person is found guilty and discharged, the record is nevertheless there.

Mr. Rosen: Oh, yes.

Senator Croll: I understood you to say it was not.

Mr. Wise: Did you say if the judge discharged him, the record will be there?

Senator Croll: No, no. The judge imposes no penalty. He finds him guilty but imposes no penalty at all.

Mr. Ruby: The record is kept of that discharge.

Senator Croll: Yes, but at the same time he is on record as having been convicted, and yet there is no penalty attached.

Mr. Ruby: That person is entitled to say, "I have never been convicted of a criminal offence." He is not entitled to say, "I have never been found guilty of an offence under the Narcotic Control Act," because that, in fact, happened.

Mr. Rosen: If I may say so, senator, it is my experience that employers, where they used to ask the question, "Have you ever been convicted of a criminal offence?" are now amending their application forms to read, "Have you ever been convicted of a criminal offence or found guilty under any statute of Canada?"

Senator Croll: All I can say to you is that the people who deal with that, the RCMP, to whom I put the same question, would be only too glad to find one of those employers who put on questions in that fashion. The question was asked directly, "What answer do you give, even after you have been pardoned, when you are asked if you have ever been convicted?" The answer must be, "Yes, I have been pardoned." Of course, it is worthless at that moment, but the answer must be, "Yes." That is what I thought you came down here to spiel about, but you have not, so far.

Mr. Ruby: May I make one comment on what Senator Buckwold said at the outset? He said we are not objective. Of course, we are not objective. I agree with that. What I would suggest, however, is that no one is objective. That is an elusive search for the objective submission. We have a perspective based on our experience, which, hopefully will be helpful to you. We offer it you with that knowledge. We do not pretend that we have anybody else's experience. I can say this, however: a sizeable proportion of our income—my income, for example—comes from defending people accused of narcotic crimes. I would be most pleased to dispense with that income. It is not strictly speaking in my interest, but it is in the interests of all of us.

Senator Prowse: If I understood you correctly, if we took out of the act as it now stands all of the minimums, leaving the maximums in, this would then leave the necessary flexibility in the hands of the courts, supervised by the attorney general, and acknowledging the fact that the accused can now obtain counsel regardless of ability to pay. This would then provide the necessary flexibility for the court to be able to deal intelligently with the matter.

Mr. Ruby: That is right. I should say that our courts have not been loath to be really tough where the circumstances do warrant it.

Senator Prowse: So, in effect, then, we get rid of the main abuse so far as you are concerned, if we eliminate the minimums as they have applied to cannabis, which is what we are concerned with?

Mr. Ruby: Those minimums are one of the most heartrending aspects of defending a drug case.

Senator Prowse: The objection to trafficking at the present time and the onus on trafficking is that it brings the person under sections where minimums apply. Is that correct?

Mr. Ruby: Minimums only apply for importing, and there is no onus on the importing part. The onus is a separate question.

Senator Prowse: Then there are two things involved: importing, in your opinion, should be treated purely as either possession or trafficking?

Mr. Ruby: No, sir. My suggestion is that cultivation should be treated as either possession or possession for the purposes of trafficking. The submission is not that you should encourage cultivation but just that the distinction is unnecessary. With respect to anyone who is guilty of cultivation, the same evidence required to prove that offence also makes him guilty of either possession or possession for the purposes of trafficking. It is just the question of its being superfluous. It is unnecessary.

Senator Prowse: That brings us to the matter of trafficking. If I understand correctly what you have said, you are unhappy with the present definition of trafficking. What could be done in a realistic way to change that definition without doing what the police are afraid will happen: namely, opening a barn door through which every incompetent defence lawyer can drive a truck.

Mr. Ruby: The police, like us, have an interest.

Senator Prowse: Of course.

Mr. Ruby: The interest in this particular situation is for ease of conviction. They do not want their job made more difficult. I understand that. But I do not think that that should be the over-riding consideration for you in assessing the bill. If I were to hand this cigarette to Mr. Wise and if it were a marihuana cigarette, I would be committing the offence of trafficking, for which I could go to jail for a long time. Our submission is that all you have to do is take the word "give" out of the definition. That leaves you with, "sale, distribute," which is the widespread giving to a number of people. It leaves you with "transport for the purposes of distribution or sale."

The word "deliver" has been interpreted by the courts to mean delivery for the purposes of sale and/or commercial

exploitation, where the word "give" is not in the statute. However, where the word "give" is in the statute, "deliver" means any delivery. There is one section in the act where the word "give" is not included. That is Schedule G, and the police have not been hampered in obtaining convictions for possession of amphetamines for the purpose, but the fact is that the word "give" is not there. What it means is that when the kids are at a marihuana party, where, as you may know, the custom is to take one joint and pass it around to everybody—it is a communal, friendly sort of thing—it would no longer be committing the offence of trafficking, because they are giving the stuff. They are really only in possession; that is all that is really happening. But in the case of the fellow who sells it, or who gives away a large amount, whereby you can infer further resale, because of the amount, that is the important thing. If I give you ten pounds of grass, one can infer that I am not giving it to you for personal use, but for resale. That is still an offence. The evidence is still there. But the police want to be able to say, "I do not have to prove that this was commercial." It is easier for them if there is no need to prove that. What I am saying is that the evil is the commercial transfer of marihuana. So let us punish that, and not drag into the net all these kids at pop parties. All you have to do is throw the word "give" out, and that would solve that problem.

Mr. Rosen: Senator, if I may add to that one comment, you often find in the courts the situation where a party has been raided, and the police charge one or two of the people at the party, and perhaps the owner of the apartment, for possession for the purpose of giving a friend a joint of marihuana. They will charge them with possession for the purposes, and when it comes to court they will be very glad then to have it reduced to simple possession, because the pressure is on. They know that if they are convicted for possession for the purposes, they are going to go to jail. The police use that as a lever, and of course simple possession is the lesser and included offence. If you take out the word "give", and you have maybe an accused who is a citizen disposed to exercising his right to a trial, he may do that, because he knows that he can only gain. He knows he did not sell, he is not in the business; and I submit this legislation should be directed to illicit profit, as opposed to just the giving for personal use. The same thing applies to the word "share". You often find someone will buy a pound, and the money used to buy the pound has been given to him by some of his friends. He goes out and buys; he comes back; it is divided two or three ways; and then the police come in and charge everybody with possession for the purpose. The case comes to trial, and then the police say, "Well, we will charge them with possession."

Senator Prowse: Under the Narcotic Control Act the charge of possession carries within it the inherent offence of trafficking. If he is found guilty of possession, he is faced with the offence of trafficking.

Mr. Rosen: Because of the reverse onus.

Mr. Ruby: One trial, two parts; it is two parts of one trial.

Senator Prowse: Does that apply to cannabis at the present time?

Mr. Ruby: Yes.

Senator Prowse: Or as we suggest here in the act; it applies in the same way?

Mr. Ruby: Yes; no change in that at all.

Senator Prowse: So you start off in the magistrate's court and the charge is laid, presumably, for possession, by summary conviction?

Mr. Ruby: No. It starts off this way: The "possession for the purpose" charge is laid by the police. At the preliminary hearing, in the magistrate's court, the lowest level, all the Crown has to show is possession. They do not have to show purpose because the onus is the other way. At the trial before a judge and jury, first the Crown has to show possession. If the jury agrees that he is in possession of it, then they go on to the second part. The jury goes out a second time. The jury goes out twice to deliberate. After finding possession, they come back in and the accused has to establish, on a balance of probabilities, that he was not in possession for the purpose of trafficking.

Senator Prowse: I am a little confused here.

Mr. Ruby: It is confusing.

Senator Prowse: We are proposing that simple possession, as it has been called, will be punishable, or chargeable, by summary conviction. Then, if the person goes by summary conviction, how the devil do they move that by the reverse onus?

Mr. Ruby: They don't.

Senator Prowse: They always go ahead by indictment?

Mr. Ruby: The one that has the reverse onus is the charge of possession for the purposes of trafficking—not possession and not trafficking.

Mr. Rosen: The onus provision has nothing to do with the procedure followed in court, whether it is by summary conviction or by indictment. For example, under the Food and Drugs Act, with respect to methamphetamines, or speed, the Crown has the option to elect to go by way of summary conviction. Supposing it elected to do that, in a particular case: the trial would be in front of a magistrate, but the onus provision still applies.

Senator Prowse: That is what I was wondering.

Mr. Rosen: That is because the charge is one of possession for the purposes. If it is simple possession the onus provision does not apply because then the Crown has to prove the first part of the case.

Senator Prowse: Is the matter of possession, as set out in the present act, satisfactory from your point of view?

Mr. Rosen: It is not satisfactory at all.

Mr. Ruby: We feel this is a good step. There is no one, I suspect, who feels that this legislation is going to solve the marihuana problem, or deal adequately with it. This is, for the moment, a step in the right direction. We hope that the problem will be dealt with further in a few years, after we have tried this for a period.

Mr. Rosen: Senator, if I may, the amendment that is being proposed here with respect to simple possession merely affects the election between charging by way of summary conviction and charging by indictment. At present they have that election, and in the new act there would be no election on simple possession. Secondly, it only affects the penalty. The issue of the reverse onus only applies to the charge of possession for purposes.

Senator Prowse: So the legislation still applies to possession for purposes of trafficking—which they presumably could do—in which case we would still have the reverse onus.

Mr. Rosen: That is right.

Senator Prowse: Now, with regard to reverse onus, this is not as unusual a thing as you are making it appear. For example, under the Criminal Code, what do you get for possession of burglar tools?

Mr. Ruby: That is not a full reverse onus. That question went to the Supreme Court of Canada, and they approved the procedure, but it is not as full a reversal of onus as this one. There there was a *prima facie* presumption of certain facts. Here it is an absolute onus of establishing something from scratch.

Senator Prowse: In other words, where it says in several sections of the Code, “the proof of which lies upon him,” that means proof within the meaning of the criminal law, so that he merely has to raise a doubt, in effect.

Mr. Ruby: I do not think that is true, but it is a lot easier to do that where it is merely a presumption that lies against you than in a case where it is a question of trafficking, in which you have to prove from scratch your own intent.

Senator Prowse: I get tired of people coming in here and saying or implying that this is something someone has just invented. I can think of several other cases. There is recent possession of stolen property, for example.

Mr. Ruby: There is an explanation that has to be given, but it need not be one that is believed. It simply has to be one that might reasonably be true. That is a totally different kind of thing.

Senator Prowse: Then was about the person wandering around trespassing at night?

Mr. Rosen: Again, an explanation is required. There is no onus on him to establish a balance of probabilities. If he gives an explanation that reasonably could be true, I submit that he has put up a defence.

Senator Prowse: Supposing that we came to this, that instead of having the reverse onus spelled out in the way it is, we were to provide the same kind of wording as there is in the Criminal Code?

Mr. Ruby: That would be an improvement, senator. The standard in civil law, as you may know, is that you have to have proof on a balance of probabilities. If we were to take it out of this area and import it into that particular offence—if we were to put it into the traditional criminal law area, where, even if there is an onus on him, it is an onus only to raise a reasonable doubt—that would be a tremendous improvement.

Mr. Rosen: But then you are aiming it at the user as opposed to the trafficker. It is the same thing as saying to a man having possession of a bottle of alcohol that the onus is on him to show that he is not an alcoholic, and to explain its use, whereas what you should be doing is aiming at the man who is trafficking for profit. Why should a man charged with possession for the purpose have to explain his possession, whereas, for example, in most of the other offences under the Criminal Code no explanation is required on the part of the accused?

Senator Neiman: The RCMP and various law enforcement officers have said they need this particular section as it stands, because of the ease, supposedly, with which criminals can dispose of the goods. I think this is part of the argument. Can you see any merit in that? Do you feel that the same objective would be achieved by following the procedure suggested by Senator Prowse?

Mr. Wise: In the Food and Drugs Act—and I think Mr. Rosent has already mentioned this—the possession of methamphetamine or speed is legal in Canada, but possession for the purpose of trafficking or trafficking in speed is illegal. The police—at least, this has been my experience—have not had any difficulty in enforcement and in prosecuting with regard to that offence. In other words, possession is legal and it has not hampered them in prosecution for the possession for the purpose of trafficking or trafficking in speed where there were greater quantities than one would need for one's personal use. But that is all that needs to be shown.

Mr. Rosen: It is also easier to manufacture speed than to grow or to import marihuana.

Mr. Ruby: One further comment on your question, senator, and that is that I cannot see how the ease of getting rid of drugs or destroying the evidence would have anything to do with this whatever. If the evidence is destroyed, then no prosecution would lie, regardless of how you word the statute. If the guy is quick enough to flush it down the toilet or throw it away or whatever, then, no matter how you word the legislation, it is not going to be easier, in fact it is not going to be possible at all to prosecute. The effect of it is that it is convenient for them to have it there as a lever; and I think that is the real purpose they have in mind in wanting it. That is the purpose for having it. I cannot see any other real practical purpose for having it. It is a leverage for plea bargaining, and pressuring an accused into pleading guilty, but that is all it does.

Senator Neiman: Are you then dispensing with that ancient tradition of plea bargaining?

Mr. Ruby: No, my own view is that it should be done publicly and on the record, but I think we need it.

Senator Godfrey: On a point of order, Mr. Chairman, I am having difficulty in hearing what is being said, because of the noise that is going on at the back of the room where the television crew is. Could we have a little order, please?

The Chairman: You have heard the senator's complaint on the chatter at the back of the room.

Senator Prowse: Where speed is concerned, did you say that the possession of speed is not illegal?

Mr. Ruby: That is correct.

Senator Prowse: Under any circumstances?

Mr. Ruby: Under any circumstances. Possession for one's own use is legal in Canada. Speed or methamphetamine—women take diet pills at home, and those diet pills contain small amounts of methamphetamine, and what they are doing is legal. Methamphetamine is used extensively, unfortunately, sadly in Canada. We could hardly compare the danger of using methamphetamines with that of using cannabis. There is no comparison between the two drugs. One is a narcotic and the other is a—well, that is questionable. I suppose I had better call them both drugs.

Mr. Harold J. Levy, Barrister, Toronto: With respect to that, senator, is it our submission that you do not have to amend the Food and Drugs Act as proposed. All you have to do is to delete cannabis from the Narcotic Control Act and by regulation add it to Schedule G of the Food and Drugs Act as it applies, and that would be in essence what you are doing in this act.

Senator Prowse: That is what we are proposing to do, to put it over.

Mr. Ruby: But the way you are doing it is that you are creating a special section under the Food and Drugs Act. If you wish to make it that possession of cannabis is no longer an offence, in other words, to treat it in the same way as methamphetamine is treated now, the simplest way to do that is to take cannabis out of the Narcotic Control Act and put it in Schedule G of the Food and Drugs Act, and not this new schedule you have established.

Senator Asselin: I would like to ask my question in French.

[Translation]

First, I would like to congratulate the defence counsels who have presented a very interesting submission. I do not know whether I feel sympathy for them because I am one of them, but I have the feeling they have established extremely important heads.

I would like to come back to the matter which worries me considerably since the debate on this bill. The matter raised by Senator Prowse and also by Senator Neiman, and which, obviously, is your reference to the onus on the accused to clear himself by saying that he did not have it for purposes of trafficking but simply for his personal use. You refer to it on page 8 of your submission. I have a feeling that you also wanted to mention section 50 of the bill which deals with the onus on the accused to clear himself by proving that it was a matter of simple possession and not for trafficking purposes.

Obviously, I also object to this part of the bill, because in Canada the Crown tends more and more to reverse the law of evidence. It was seen lately, in an act passed about the breathalyzer test. If somebody undergoes the breathalyzer test, as a lawyer you certainly know, that if he has .08, there is no possible defence. He must plead guilty immediately, the onus for evidence is completely reversed.

Therefore, I am saying they should restrict the intervention of the Crown regarding reversed onus. In Canada evidence provides that the Crown must prove the guilt of the accused.

I would like you to dwell a little more on the consequences for an accused person to have to prove his innocence under section 50.

On page 8 of your submission, you have emphasized the fact that somebody who is charged, can remain silent, it is true, and it is then up to the Crown to prove his guilt. But, what are the practical aspects which you meet in the exercise of your profession regarding this section, which does not protect the rights of the accused. Can you elaborate on this?

[Text]

Mr. Ruby: I am not sure I can answer you fully, but the basic principle is as you have stated it. I suspect the reason why we do not require people to prove that they are

innocent ordinarily is simply that it is really a matter that one can never prove. How can one prove that one is innocent? How can you prove that your purpose was not X or Y? Simply by stating it that broadly, in my submission, it becomes clear that an impossible task is set because one might always have such a purpose lurking in one's mind; it is something that to my mind one can never totally disprove. In practice, what it means is that the accused person must take the witness stand and then he exposes himself to cross-examination and that means under our law that any criminal record he might have, however old—ten or even thirty years ago—however minor, however irrelevant it is to the present charge, is exposed to the jury and to the judge, and that is a prejudicial thing regardless of the nature of the trial. It prejudices his defence.

Secondly, you can be examined on your past use of drugs. For example, you can be asked, "When did you first start using drugs? How long have you used them? Have you ever used other drugs—heroin or more serious drugs? Are you a bad guy?" The Crown gets an opportunity to paint your character and that is a very prejudicial thing. You have the right to call experts, but an expert can never know what is in your mind. In fact, no one ever can know what your personal purpose is. But the Crown can also call experts and, for those of you who are lawyers, you know that experts will say almost anything and they will contradict each other absolutely and flatly. The Crown will call an expert who will say, "This is an amount that is consistent only with trafficking." And the defence will call somebody who will say, "This amount is clearly not a trafficking amount." They are both equally qualified and presumably truthful experts. So the end result is that the jury becomes confused and then at the end they are told that the onus is on the accused. In every other criminal trial if the jury is not convinced of something then they are told that they must acquit. That is the basic principle of the law. But after such an experience, and exposing the background and the prejudicial material, and forcing the accused on to the stand, and conflicting experts, juries tend to convict, not because they are certain or satisfied in the real sense that the man is guilty, but because they cannot cope with the complex and the taint.

I hope that answers your question, in part.

[Translation]

Senator Asselin: Thank you very much, essentially, it is very valid. I would also like to raise another matter. The committee, as it indicated this morning, is very concerned about criminal records after a sentence for simple possession. We know that in Canada there are thousands of people who use marijuana or hashish, and there are many young people who have records who prevents them in many areas, either to take up such or such profession, because the University does not accept them, mainly a young candidate who wants to study medicine or law, if he has a record. Before this Committee we were told that we have a parole system. But according to my experience as a lawyer, I think it takes a long time to get a record removed, I had the experience again lately, that it may take a couple of years.

Would you not recommend to the Committee that when the person is accused of simple possession, to spare him from a criminal record, the judge deliver an unconditional sentence? This is done once in a while in the Province of Quebec. I do not know if it is done in Toronto, but under certain circumstances the judge, to spare the kid from the

opening of a criminal record, will deliver a unconditional sentence. Could this not be included in the act, to the effect that the judges could have the alternative of prescribing a fine, or could we not include in the act that the judge could also, according to the record of the person convicted, deliver an unconditional sentence? This unconditional sentence would no doubt spare the convicted from a criminal record.

[Text]

Mr. Wise: Senator, when you use the phrase "unconditional sentence" I think you are referring to the discharge conditions of the Criminal Code.

Senator Asselin: Yes.

Mr. Wise: There is an unconditional discharge or an absolute discharge and there is a conditional discharge, meaning probation for a period of time before receiving the absolute discharge.

Senator Asselin: Yes, but with the conditional discharge the accused will have a criminal record.

Mr. Wise: Well, he has the record of a conditional discharge, but it is not a criminal record. It is just a record of the finding of guilt for possession of narcotics, or possession of drugs, as the case may be. If your concern is with the problem of records, my submission would be that you could state in the legislation as an alternative that for a first offence the judge must give an absolute or conditional discharge. The second problem is, what does that discharge mean and is it really an absence of record in the sense of your remarks. That is a problem which may not be within the purview of this committee. It would take, in my submission, clarification of the Criminal Records Act. I do not believe it could be dealt with within this particular bill.

The second alternative would be that, even if discretion in the trial judge were obtained not to give a discharge of any kind, which is as the legislation is now and is proposed in Bill S-19, some provision might be made that these records, at least in the case of cannabis, should be automatically discharged without application to the pardon board. In my opinion, you are right; there has been great difficulty in obtaining pardons, or wiping out the records. I know of no one who has obtained a pardon and of one case in which application was made and the RCMP conducted an investigation, and the application was refused. Again, no one ever knows this officially, because no reasons are given. The hearing is held in camera, with no access, which is a terrible procedure. The official position is that the applicant has been involved with leftists, for instance, and is not back on the straight and narrow. What connection has that with the discharge of a conviction for possession of cannabis?

It seems to me that if, in fact, the intention of the legislation is not to saddle people permanently, one does not take the discretion which is exercised in good faith by the trial judge in granting the discharge and put it in the hands of the RCMP to dig up whatever dirt they can find four or five years later. An amendment could very simply be applied to this act providing that in cases of discharges, absolute or conditional, granted pursuant to this section of the act there shall be no need of application to the pardon board, but the discharge shall automatically arise, immediately in the case of an absolute discharge, or at the conclu-

sion of the term of probation, if satisfactorily completed, under a conditional discharge. That would mean that all would receive discharges.

Most young people are very unsophisticated and this is a difficult area, even for us, to understand and, I presume, to be knowledgeable in. The young offenders therefore do not know enough to apply, where to apply or what they have to do. In many cases they are afraid. They know there will be an RCMP investigation of them and their life style. Which of us is free to avoid an investigation of some kind? Maybe the applicant is living with a woman to whom he is not married and does not want that fact disclosed, but does not wish to lie about it, so he will not apply. It is that screening, which may be necessary in cases of serious offences in connection with which pardons are sought, which I submit is not necessary in cases of simple possession of cannabis.

Mr. Levy: Senator, if I may assist in this regard: It has been my experience in the Toronto courts, in which there are numerous magistrates or provincial court judges hearing cases involving criminal possession, that today, 1975, most judges will grant an absolute or a conditional discharge to a first offender. However, there are still in Toronto some judges who will not. I am a criminal lawyer and I suppose that means I should know which judge to go before and which not to. It is very unfair for certain individuals to stand up before the wrong judge. From time to time I have occasion to leave Toronto and go further afield, to such centres as Hamilton, St. Catharines and Kenora. I find there that, being away from the metropolis, the judge looks at my client, who may be a young offender, although sometimes they are not so young, but the judge is usually a little older. In any event, the fine for the first offence is usually \$100 or 30 days, or the fine may be \$150. My point is that a matter such as simple possession of marihuana can be emotional and can involve the subjective feelings of the judge. Many judges try many people who are faced with this charge and I feel that it is dangerous to leave the judges with this discretion, if Parliament decides that it does not wish offenders to be saddled with criminal records upon conviction for simply possession.

Senator Neiman: Perhaps we can just go right on with what Mr. Levy has been discussing, the matter of discharging and sentencing as we find it. I wonder if we can get a little clearer picture from experience in the Toronto area, which is one of our largest metropolitan areas. Do you find, in your own experience as lawyers, that many people are charged merely with simply possession, or are they charged with a multiple number of offences?

Mr. Ruby: Both ways, senator. A pot party is raided and no one will speak or acknowledge that one or two joints or three joints are theirs. All 20 people come traipsing before the judge and are charged with possession. If, on the other hand, they find one ounce of marihuana, the charge is more likely to be for possession for the purpose of trafficking.

Senator Neiman: An ounce?

Mr. Ruby: An ounce or more, but as little as an ounce. Everyone knows—the police, the Crown, the defence lawyer, and the judge—that it is being laid for purposes of pressuring the accused into pleading possession only. There is a mix of both, in other words. There are far more possession charges than any other kind. I would say 70-30, as an offhand guess.

Senator Neiman: For simple possession charges?

Mr. Rosen: As the legislation now exists, if someone is charged with possession for purposes of trafficking in cannabis, the maximum potential penalty is life imprisonment. Even if they plead to the lesser and included the offence of simple possession, because the proceedings in which the plea is taken provide for a penalty greater than 14 years, the discharge provisions are not available to the court; and therefore unless a new information is laid, or the original information is amended to read itself "simple possession," the discharge is not available to the accused, even though he is pleading in essence simple possession.

Senator Neiman: Is that part of our Criminal Code procedure?

Mr. Rosen: Yes. The reason is that possession for the purpose is an indictable offence. There is no election by the Crown, and that provides for a maximum penalty of life imprisonment. The provisions of the Criminal Code—I believe it is section 661 which provides for discharge—say that discharge is not available in offences where the potential maximum is 14 years, life imprisonment or capital punishment. Obviously you cannot give a bank robber a conditional discharge even if he pleads to the lesser. That is the theory, I suppose. So the two sections are being applied to the one charge, even if you plead to the lesser. You first have to make your election as to how you want to be tried. If it is going to be an election to be tried by a provincial court judge exercising the jurisdiction of the magistrate, you will plead not guilty to the charge as read but guilty to the lesser offence of possession and because the maximum is more than 14 years, the discharge provisions do not apply and the magistrate cannot grant it.

Senator Neiman: In what percentage of cases does this happen?

Mr. Rosen: I do not know the percentage. I know that in my experience it happens in what I consider borderline cases, where, for example, a person might be found with five dime bags of marihuana. The grass being in the bags and the bags being in his possession appear to make him in possession of paraphernalia which goes with trafficking. This is a borderline case. Did he intend to keep it for himself, is that the way he bought it, or was he selling dime bags on the street? If everyone agrees and it is a matter of plea bargaining, you will find they will take a plea to the lesser and include it as a penalty to the case, because it is a borderline case, and I find that they will not lay the other charge on the trial date. You make a deal, to use the vernacular—my friends cringe at that. You make your agreement—that is a better term—and you have your plea; but the police would not lay a new charge; they would charge you with simple possession. They make you plead to the lesser, and you cannot get a discharge.

Senator Neiman: You are saying that in a certain number of cases the police could withdraw that charge and lay one of simple possession at any time? It is their prerogative?

Mr. Rosen: Certainly. It is at their discretion.

Senator Neiman: When these charges are laid, what are we talking about in terms of time lag and trials? I am interested in knowing what is happening in the courts.

Mr. Ruby: That is a travesty.

Senator Buckwold: Mr. Chairman, I do not think that everyone should answer every question. It is delaying the

proceedings. A number of senators would like to ask questions, and it is taking a long time to get answers because everyone is replying. It seems to me that someone should be the spokesman. If he requires further assistance, he could ask for it.

Mr. Ruby: We will try to do that; thank you. Very briefly, the time lags are twofold: one because of the vast number of cases—there is a horrendous number of cases; and, secondly, because the federal government will not provide sufficient facilities to analyze these drugs. The analysis time lag is months and months, stretching anywhere from two to six months on a case before you can even get an analysis done. If someone is in custody, they speed it up to perhaps one month.

Senator Neiman: Are you talking about the type of charge, whether they are charged with marihuana or LSD?

Mr. Ruby: No matter what it is, it has to be analyzed and the time lag applies to all drugs. The government will not provide sufficient funds to pay analysts. That is the principal problem of delays in these trials. Delays in drug trials are worse than in any other area.

Senator Neiman: Do they allow these people out on bail?

Mr. Ruby: Some of them are, and some are not. The ones who are in custody still have a time lag, in my experience, of at least a month.

Senator Neiman: Before they are brought to trial or before they are even charged?

Mr. Ruby: They are charged, arrested, and kept in custody, but for a period of a month no one even knows if the substance is what the police think it is. For example, I have had cases where guys have been kept in custody and a month later it turns out that what the police thought was marihuana was nothing—it could be alfalfa, or whatever.

Senator Neiman: Are the vast majority of people who are charged with simple possession allowed out on bail?

Mr. Ruby: The vast majority.

Senator Neiman: You are talking about the time lag even when a person would be allowed a conditional discharge or an absolute discharge.

Mr. Ruby: That cannot arise until trial. It comes after all these things are done.

Senator Neiman: I have heard it said that there is a backlog of something like 2,000 cases in the Toronto courts. Is that a reasonable estimate?

Mr. Ruby: I would be surprised if it was not more.

Senator Neiman: Only drug related cases?

Mr. Ruby: Drug cases only.

Senator Neiman: In the Toronto area?

Mr. Ruby: That is right.

Senator Croll: If the government refuses to pay for the analysis, who pays for it?

Mr. Ruby: The government pays for the analysis. They have set up a number of laboratories across the country. There is one in Toronto. As I understand it, the salary

scales are so low they cannot hire enough qualified personnel. As a result, they are perpetually short-staffed and there is from two to six months' delay in getting an analysis done.

Senator Croll: If a man were able to pay for it, could he take it out privately?

Mr. Ruby: Pursuant to the Criminal Code, you can make a motion for your own analysis as an exhibit, but that will not substitute for the Crown's analysis. The Crown still has a right to get it analyzed and there is still this backlog.

Senator McIlraith: Mr. Ruby, I want to take a moment to clarify your original presentation on one or two minor points. Turning to page 2, you say:

We believe that Bill S-19 is a significant move in the right direction. Accordingly, we support the bill and the policy which it represents."

Then there is the next sub-heading:

No Jail Sentences for Simple Possession of Cannabis, Except in Default of Payment of a Fine

That seems to be clear in your later evidence. Then comes the following sentence:

We believe it very important that the Bill eliminate the possibility of a jail sentence for persons convicted of possessing cannabis.

That does not seem to follow necessarily from the other two sentences. It is the use of the word "possibility" on which I am attempting to pick up some clarification. Would you want to eliminate the possibility of a jail sentence in the case of someone convicted of possession of a very large amount of cannabis?

Mr. Ruby: Except in default of a fine, yes, I would. If the Crown is in a position to prove that it is part of a commercial operation, then he ought to go to jail under our present legislation.

Senator McIlraith: Regardless of the quantity?

Mr. Ruby: Well, you do not want to discriminate against the rich. The kid who can only afford to buy two joints should not be in a better position than someone who has money and can afford to buy a pound at a time.

Senator McIlraith: Let us deal with the larger amounts. It is the "possibility of a jail sentence" on which I should like to get clarification.

Mr. Ruby: If it was 100 pounds, senator, I see no possibility that that man would be acquitted of possession for the purposes of trafficking—no possibility whatever.

Senator McIlraith: Well, you are making some assumptions. Let us assume it is 100 pounds, but eliminate your other assumptions. Why should there not be the possibility of a jail sentence under the law as it is?

Mr. Ruby: There should be, senator, if the individual is convicted of possession for the purposes of trafficking, and I should think that he would be under those circumstances.

Senator McIlraith: That is what I wanted to have clarified. Let me pursue it a bit further. In answer to senator Prowse's question regarding trafficking and possession for the purposes of trafficking, you wanted the word "give" eliminated. If you had your way, the Crown must prove the commercial transaction—that there was, in fact, a sale—which would be, presumably, conducted in private

and for cash, presumably. In those circumstances, would you still have no jail sentence?

Mr. Ruby: Perhaps you are a much better lawyer than I, senator—and your history is known—but I would suspect that even you could not convince a jury that a man was going to give away 100 pounds. Juries are not stupid. They know that if the quantity is sufficiently large and of sufficient value, it is not going to be given away; it is going to be sold.

Senator McIlraith: In this line of questioning I am only interested and concerned with the very large amounts which, obviously, would not fall into the category of what you call simple possession.

Mr. Ruby: I am saying, in effect, that there would be a conviction on a charge of possession for the purposes of trafficking in the situation that you are worried about, senator, and, therefore, jail sentences.

Senator McIlraith: It seemed to me that the use of the word "possibility" in that context was perhaps not wholly consistent with the rest of your general evidence this morning. I simply wanted to clarify that.

The last paragraph of your brief on page 9 is really an elaboration of a similar point. You say:

Finally, we suggest for your consideration, that if cannabis were simply moved from the Narcotic Control Act and placed in the same Schedule as Methamphetamine in the Food and Drugs Act, then simple possession of cannabis, as an offence, would be eliminated.

Of course, the reason for that is that simple possession is not an offence in respect of those things which are contained in that schedule in the Food and Drugs Act. That is why you want it moved, and that is consistent with the rest of your brief. However, another point that arises in this respect is that these other drugs are used quite freely for medical purposes.

Mr. Ruby: They have limited medical purposes.

Senator McIlraith: Yes. Whether cannabis should or should not be so treated is not a matter I am dealing with now. Let us assume that it should not be. If your recommendation were followed, regardless of the quantity involved, possession would be quite legal. In other words, we could have a drug ring trafficking in large amounts—and here again I am thinking in terms of the professional trafficker and the large amounts with which he deals—the possession of which would be quite legal.

Mr. Ruby: I can only respectfully refer to what I must call your misconception, senator.

Senator McIlraith: If you can clarify the situation, I would appreciate it, because this does bother me a bit.

Mr. Ruby: In my opinion—and I can only give you my opinion—anyone caught with a large amount is going to be convicted of possession for the purposes of trafficking. The problem is not going to arise.

Senator McIlraith: But why would you take away, by your last recommendation, the right of the Crown to have him convicted of possession?

Mr. Ruby: Because in our judgment, senator, we see that more social harm is caused by the prosecution process than by the use of the drug itself. It is that simple. I am not

insisting that you go along with it. The bill itself does not go that far. I am not suggesting that this bill meets all the problems. What I am suggesting is that this is what we personally advocate. We think this would meet the situation, and if any of you are moved in that direction, then this is how to do it, simply and cleanly.

Senator McIlraith: Your sixth recommendation, on page 9 of your brief, does go much further than the bill.

Mr. Ruby: Yes, much further.

Senator McIlraith: I still believe in taking one step at a time in legislation.

Senator Robichaud: I have a couple of minor questions. First of all, I should like to compliment you on the very outstanding defence you have made of your brief. Are all of you defence counsel?

Mr. Ruby: Yes.

Senator Robichaud: And do you all belong to the same law firm?

Mr. Ruby: As a matter of fact, we practice in the same building, but are completely separate.

Senator Robichaud: Would you say that all defence counsel in the Metropolitan Toronto area are in agreement with the substance or the totality of your brief?

Mr. Ruby: With the exception of our sixth recommendation, on which Senator McIlraith has focused, I would say that the overwhelming majority of defence counsel would agree with our brief. One, of course, cannot say "all".

Senator Robichaud: What about the law enforcement officer who has investigated a case, laid a charge against an accused and then finds that in certain areas of Toronto the charge is automatically discharged? You deal with this on page 2 of your brief, where you indicate that some judges automatically discharge accused persons. What is your feeling about the law enforcement officer's position in this respect? How do you think he feels about the accused being automatically discharged?

Mr. Ruby: Police officers feel badly now, senator. We are not here to protect the egos of police officers; we are here to do something for those who have problems in this country. The police will do whatever they are getting paid to do and, in our tradition, will do it cheerfully and willingly.

Senator Robichaud: I have had something to do with law enforcement agencies and I know how terribly frustrated they can get when a case is automatically discharged.

Mr. Ruby: So they are frustrated. If they are frustrated because some kid with a joint did not get punished, then I say to them, "Go find better things to do with your lives, there are serious criminals out there;"—others for whom I act occasionally—"go catch them."

Senator Robichaud: Also, do you find any difference between possession of marihuana, or other substances, through cultivation and possession through importation, assuming the same quantity in both cases? Is it a more serious offence either way, or should it be?

Mr. Ruby: I do not think it should be, senator. There is one minor advantage to people who grow their own,

namely, that they do not participate in the underground of the sophisticated criminal who is involved in importation. That is clearly a sophisticated criminal operation of some scope and value in each case of any size, leaving aside the kid who brings in a pound or two. It is probably better to keep people out of that network; it is better for all of us if our children and our young people do not have contact with criminals. That is a minor advantage.

Senator Robichaud: That is not quite answering my question.

Mr. Ruby: Try it again, senator.

Senator Robichaud: Suppose a person is in possession either way, either through importation, he has got it from somewhere, or because he cultivates it. He is found in possession. Should it be an offence of equal magnitude if he has cultivated the stuff or if he has purchased it on the market or imported it?

Mr. Ruby: I cannot make any distinction. I think they should all be treated very lightly if it is just possession. The gravamen of the harm is possession, if we focus on it, and we should not be concerned with these ancillary areas such as where he got it or how much he paid. I think that is more peripheral. I cannot do any better than that, I think.

Senator Robichaud: Let us say on one acre of land there is marihuana being grown. That is equivalent to a certain quantity having been imported. Two persons are found guilty of possession, one for having bought it on the market, the black market if you want, and the other one for having cultivated the stuff, the same quantity. Should one offence be more serious than the other?

Mr. Wise: Marihuana grown in Canada is of very poor potency compared with the marihuana from overseas.

Senator Robichaud: I do not know, because I do not use the stuff.

Mr. Wise: That is almost irrelevant. In answer to the question as to whether or not there should be a difference, I cannot really see it; I think it all depends on the intent of the person who had possession, not where he got it but what he intended to do with it. In other words, it gets back to amount. He grew or imported a certain amount; he had a certain intention, which must be proved. Let that determine the consequence of his possession.

Mr. Ruby: I think I understand the problem; at least, I hope I do. If it is simple possession we are talking about, then I think it does not matter, because if it is possession we are concerned about it does not matter where he got it or who he got it from. When you are talking about the other offences, importing or possession for the purposes of trafficking, I think it matters very much. Our courts do treat the person who grows the stuff much less severely than somebody who imports it from abroad, and I think that is proper. The courts are already doing that, and will do that without any further direction from the Senate.

Senator Robichaud: That is the answer to my question. The courts deal with it more liberally in the case of one who cultivates than in the case of the other.

Mr. Ruby: Right.

Senator Robichaud: Should the court do that? Should the law be such that the courts should be allowed to do that?

Mr. Ruby: I think so. I think without any further input they are going to do it anyway unless you direct them otherwise. I think it is good to have people not involved in that sophisticated importing network, where there are real criminals involved, certainly at the other end, outside this country.

Senator Langlois: I wonder if the witnesses could tell us at what stage of the cultivation process anybody should be said to be found in possession of cannabis?

Mr. Ruby: There is one guideline, namely that until a plant is about yea high, when you send it off to be analyzed it comes back with no analysis; that is, one that is given by the scientific base. It takes a month or two of cultivation before it reaches the height when it has tetrahydrocannabinol in the plant and it comes back with an analysis. I cannot see any problem in leaving that to be the standard.

Senator Prowse: I was getting a little confused with the different parts of the bill, and I want to make sure I am thinking the same way that you are. Section 48 of the bill, on page 4, says:

- (1) Except as authorized by this Part of the regulations, no person shall have any cannabis in his possession.
- (2) Every person who violates subsection (1) is guilty of an offence and is liable upon summary conviction.

If a person is charged under section 48(1), there is surely nothing in that subsection, or in subsection (2), that gives any authority to put him in a position where he has to prove the innocence of his possession, is there?

Mr. Ruby: Absolutely. That reverse onus arises only on possession for the purpose of trafficking.

Senator Prowse: Only when that charge is laid under section 49.

Mr. Ruby: Correct.

Senator Prowse: My experience in the courts has been that if the prosecutor lays a charge that is absolutely ridiculous—that is, he lays it under section 49 because the fellow happened to have a “joint” and was picked up—the judge will look at the prosecutor and say, “How did this case get in front of me?”

Mr. Ruby: I was in court last week and saw a man charged with possession for the purpose of trafficking with one capsule of heroin. That was in Toronto last week. It is not uncommon. That is because the judge has no jurisdiction. Once the possession of even the slightest amount of cannabis, one “joint,” is proved, he has no jurisdiction at a preliminary hearing other than to send it on for trial. The judge cannot take it away from the jury; it still must go to complete trial. The judge may take the prosecutor out into the back room and say, “What kind of an idiot are you?” That is a purely informal thing, and most judges will not do that, as you undoubtedly know, especially in a large city like Toronto. In a small town it is more informal.

Senator Prowse: If we take out that onus, it seems to me that what we are doing is making things relatively simple for the trafficker. If we give the trafficker the same opportunity of being able to provide an alternative as an explanation, even though it may not be true, then we are putting him in a pretty good position, with the capacity and type of counsel available to organized crime.

Mr. Ruby: It is a question of how much risk you are willing to run of an innocent man being convicted. All I am asking is that you give the trafficker in marihuana—which is not the most dangerous substance in the world, God knows—the same right that you give a burglar, a rapist, a murderer, or somebody who commits treason or sedition, no more. That is all I am asking. It is not an outrageous request.

Senator Prowse: I am not sure I want to go that far. I would like to get back to section 48. Surely we have to give our courts and law enforcement agencies credit for some basic common sense. When you have sections 48 and 49, obviously they are there for a purpose.

Mr. Ruby: I can only say that traditionally in Canada our law enforcement agencies, particularly the Crown's office, have acted with responsibility. They are reasonable people; we know them and work with them on a daily basis, and I respect them. However, I can tell you right now that there are individuals in any large group who will act in a different manner, and that provides for unequal justice. If that can be avoided simply by bringing this legislation in line with all other criminal legislation, with one or two exceptions of some note, although that is the general thrust of criminal legislation, in my submission that would be a good thing. It would not cause the traffic in drugs to run rampant, in my submission.

Senator Prowse: Surely if somebody goes haywire at the first level, there are the appellate levels who presumably can straighten the matter out.

Mr. Ruby: Not if you write the law the way this bill is. They have no authority to strike it out; there is only authority to convict and uphold the conviction. If you write it the other way, then they have more discretion to interfere where an injustice has been done. If you tie the hands of the courts by inserting this civil law balance of probabilities test they are going to force it.

Senator Prowse: Let us go to one more thing. I was reading some of the American proposed laws with regard to what amounts to an absolute discharge, what would be the equivalent of our absolute discharge. There they go on to a second section. Where ours says, “It is deemed to be,” they go on to add that a person convicted by this section shall have the right to deny, any time he is asked the question, that he has ever been convicted. In your opinion, would it be within the competence of the Parliament of Canada to put that kind of provision in?

Mr. Ruby: Without doubting that it is within its competence, in my own view it would be unwise and unnecessary.

Senator Buckwold: On this line of questioning, of having to prove innocence as against proving guilt, would you apply this to all narcotics?

Mr. Ruby: I would, but I think it is clearest in the case of cannabis because of the relative harmlessness of cannabis.

Senator Buckwold: Would you say, in your opinion, that this should also apply for charges of trafficking in heroin or any other hard drug?

Mr. Ruby: I would agree on general philosophical grounds, but I am not totally unreasonable. I think there is nothing wrong with trying it in this area and seeing how it looks for a few years, and then having another look at it again in a few years.

Senator Buckwold: Could you guide us as to whether this procedure is followed in other countries, or are they following the Canadian procedure? For example, in the United States do they use the recommended policy that we have in this act or does a court have to prove guilt?

Mr. Ruby: There are 50 states, each with its own different procedure, and I cannot speak for the States. I do not think the federal government in its act follows this particular method.

Senator Buckwold: You are suggesting a unique kind of legal procedure, then, insofar as cannabis is concerned.

Mr. Ruby: I am suggesting that what we have now is unique.

Senator Buckwold: I do not get that from the answers. If what I gather is correct, you have indicated that what we have in Canada generally applies in most countries.

Mr. Ruby: No, sir. I cannot speak for other countries.

Senator Buckwold: Then I must have misunderstood your answers.

Mr. Ruby: I think this is the exception to the general rule, but I cannot speak of particular jurisdictions other than the federal government of the United States which does not follow this.

Senator Croll: Mr. Chairman, let me first say to the witnesses how much I appreciate the fact that they have presented a brief—but strictly a legal brief. I would never question their legal ability. If by any chance I am in trouble I will be glad to see that they defend me—but without legal aid, if possible.

Senator Asselin: I am sure we are all agreed that they are good lawyers.

Senator Croll: To be very frank, the point I am making is that their brief was something a little less than I expected from them. I thought they would reach out for some new horizons. They are young men, they are practising, they have good reputations, they surely must have some ideas. That is what I came down here for this morning. But I did not get what I came for; I am disappointed. Furthermore, it surprised me to find that I would know a little more in some respects than they.

I suggest that you take a look at paragraph (6) on page 9 of your brief:

Finally, we suggest for your consideration, that if cannabis were simply moved from the Narcotic Control Act and placed in the same Schedule as Methamphetamine in the Food and Drug Act, then simple possession of cannabis, as an offence, would be eliminated.

That is exactly what they did in Sweden, and, according to the notes I have made here for my own use, they bought themselves a new generation of addicts.

Mr. Ruby: Senator, nobody, absolutely nobody, is addicted to cannabis and I cannot accept that characterization.

Senator Croll: You had better put your argument to the *New York Times*, because that is what they reported.

Senator Van Roggen: Did the *New York Times* use the word "addicts" or "users"?

Senator Croll: Addicts. Now, I did expect you to make three approaches. You did on penalties. Of course, we agree that the penalties should be changed. But I then thought that you would, if you had been following our records, have noticed that we were going very strong on the concept of decriminalization. I thought you would raise the question of legalization and discuss that. This is an opportunity to talk to parliament. How do you miss an opportunity like that? But you did not discuss it. But let us get back to decriminalization. You said, "Well, it is not going to be very difficult." But when the RCMP were before us, I put it to the inspector who was giving evidence, "Why don't you handle it this way: 'Don't write to us. We'll write to you and send you your pardon.'?"

That is what you have suggested this morning. That is what I suggested then. Well, he knocked me down pretty quickly, and he was a very fair man, I thought. He was trying to indicate how it was impossible to do that, and although that is what we wanted to do he gave us a good many reasons, which you will see in the record if you care to read it, just why it could not be done that way, although in our opinion it was necessary.

Just so you can see what is happening, let me give you a living example which you can latch onto—which everybody can latch onto. Two commissioners are appointed to the Hamilton Harbour Commission. With respect to one man, who is overlooked, the minister says about him, "I did not appoint him for this and this reason." Twenty-five years ago he was found in a bookie joint writing bookie bets, for some reason. He was fined \$10 or so and as of that moment had a record. He never paid any attention to it. He grew up in town a fine man about whom no one could say anything wrong. Finally, he realized that perhaps it was a bad thing to have this record, and he approached the authorities to obtain a pardon.

Incidentally, I asked the commissioner how long it would take to get a pardon—I knew how long it would take, because I have been through the mill—and he said it would take about a year. Well, the person to whom I am referring has been seeking a pardon for three years now. As you well know, it usually takes at least two or three years. In any event, no pardon has appeared yet. At the present time, because he has found himself in some difficulties, the press is raking him over in a savage way: "Why, this man has a record."

It is this sort of thing we are trying to avoid in some way or other, and I was hoping that with your experience you could tell us how we could do this. I felt that all the knowledge was not on this side. However, I did not hear it from you, because what you have given us is what we have already talked about before.

Mr. Ruby: Senator Croll, I did suggest to Senator Asselin that one method of doing that would be simply to insert a clause saying, "By operation of the law, at the conclusion of one year after a conditional discharge, or immediately after an absolute discharge, the record will be erased." That would thereby circumvent the awkward procedure under the Criminal Records Act. That is the answer I have to give.

Senator Croll: One objection to that is that it tends to be discriminatory; another is the fact that one year actually means three years, as you ought to know very well. Moreover, if you apply for a pardon, it is all right if you live in Toronto: you do not know your neighbour; you hardly know your relatives; and nobody else knows them. If you

go to the minister and then to your alderman, that is the end of it. But if you try that in a small town, everybody in town knows that you have been making enquiries.

Mr. Ruby: Let me make myself clear. If what I am suggesting is accepted, no one will have to apply or be investigated. It will go by the operation of the law automatically.

Senator Croll: Regardless of whether he has got into further trouble or not?

Mr. Ruby: Everybody gets it.

Senator Croll: Everybody gets it. Okay.

Mr. Ruby: It is better than the investigative procedure where some of them get it but most of them do not even bother to apply.

Senator Croll: Well, of course, when you talk about applying, 90 per cent of them do not even know and those who do know are fearful of applying because of the difficulty involved. So if we are talking about it being automatic, then that is a plus.

Mr. Ruby: Yes, it would be automatic.

Senator Croll: I then thought that you would talk to us about legalization. If other responsible people in this country, particularly people who are interested in criminals, could speak to us about legalization of cannabis, I thought the lawyers would at least have some views on it which they would present here, but I have heard nothing from any of you yet.

Mr. Wise: Senator Croll, up to 1972 over one million Canadians had smoked cannabis in its various forms—marihuana, hashish, and so on. If you want us to say that cannabis should be legalized, we are more than ready to say it. We treat these proposed amendments not as the end of the road but as an interim step towards the inevitable legalization of cannabis.

Senator Croll: I did not want you to say that at all; but if you had followed me you would have realized that the people who are particularly concerned—the criminologists, who are responsible people in this country, and who have been associated for a long time with this problem—are talking in that sense. I thought, from your knowledge, that you would come and give us the arguments pro and con.

Mr. Wise: Senator, one of the members of the Le Dain commission, Professor Bertrand, who is a criminologist, has stated—

Senator Croll: I have read it.

Mr. Wise:—that cannabis should be removed from the Narcotic Control Act, and cannabis should be totally legalized, under government control. If you want to hear some benefits, if you could call them that, of legalization of cannabis, there is the fact that cannabis could be distributed under government control; there would be sources of employment—

Senator Croll: Look, I have read the report, or that portion of it, and I know what these people are saying. What I thought you would give us were the pros and the cons of the the problem as you saw it. You have a lot of expertise and experience among you. You have 50 years' experience among the five of you, I believe.

Mr. Wise: There would be tax revenues gained by the government sale and distribution of cannabis; the cannabis could be made available for purposes of research, and so on.

Mr. Ruby: Let me say this. I think we could come in here and argue for the complete legalization of cannabis—or its possession, in any event—consistently with our beliefs and recommendations. We have recommended that in paragraph 6, page 9. That is the recommendation there—nothing less than that; pure and simple. The arguments for legalization and against them have been gone over. I know them; you know them; I think we all do. We prefer to spend our short time with you focusing on legal areas in which you might not get any other feedback or input from anyone, and we do have some expertise. Personally, I hope you make possession of cannabis lawful. It will deprive me of certain revenues, but I will be pleased. However, you know the arguments, and I know them.

Senator Neiman: Following up on that, is there an area in between complete legalization and the present act, with regard to which we are talking about something—I see heads being shaken over there in the corner—like some other word. Simple possession could still remain in some sense an offense, but something less than what we now propose may be appropriate.

Mr. Ruby: You see, jurisdictionally your difficulty is that if you create an offence, as Parliament, it is punishable. It is, by definition, under the BNA Act, in my submission, in any event, criminal. What you can do, and it is fairly simple, is to treat possession of cannabis as an offence punishable by only a discharge—absolute or conditional. That leaves a judge the option of taking someone who is found in possession of cannabis, but who has some personal problem, and saying, “I will give you a conditional discharge and place you on probation for two years, during which time you will do X, Y, Z”—that is, such things as, “Stay out of this area. Live at home. Avoid these kinds of friends, and so on. It gives the court some control over the cannabis offender who has other problems, or problems related to the drug, and at the same time it would be a half-way house between complete legalization and the stigma of criminality.

Mr. Wise: There is another way. There is the Liquor Control Act. It is true that it is within the provincial jurisdiction. The Liquor Control Act in each province controls this. If you sell or consume alcohol improperly you are committing a provincial statutory offence, but you are not committing a crime. Similarly, the same thing could be applied to cannabis.

Senator Neiman: Could not the government utilize any of these ways, keeping in mind that the government at the moment will insist on trying to discourage the use of marihuana or cannabis products of any kind? I do not believe at this present moment in time that it would be prepared to legalize it, even though we may discuss that in some way at the moment. I am referring to legalizing possession.

Mr. Ruby: If cannabis were an offence punishable only by an absolute or conditional discharge, then cannabis would still remain contraband, and could be seized by anyone at any time. That might solve some of the problems, and make it clear at the same time that you are not encouraging the use of cannabis. It would remain contra-

band, but the penalty would be only an absolute or conditional discharge, resulting in no criminal record for anyone for simple possession only. In my mind, that proposal makes a good deal of sense.

Senator Neiman: You are probably aware of the present Oregon law, under which possession of, I believe, one ounce or less, is deemed as simple possession and punishable by a fine. We have not had any evidence as to how this is working, as yet, but we do hope to have some next week, from the people who have been involved with the administration of justice there, under that new law. Do you think, however, that that might be a type of law that we could think of, or do you think that administratively and from a legal point of view it would be very difficult to try to define—for instance, as to whether one ounce should constitute possession?

Mr. Ruby: I think our view is that that is an acceptable way of dealing with the problem. It is, however, only one way. The obvious danger, of course, is that people who are trafficking will wander around with bags containing less than an ounce. It hampers the traffic, but does not cut it out as effectively as the choice of possession being either legal, or the half-way house we spoke of, coupled with possession for the purposes of trafficking being punishable, as it is now, by a serious jail sentence, and leaving the choice to be determined in the light of all the circumstances, and not in the light of just the one circumstance of the amount in question. So I think the more flexible approach—I was going to say “better”—is certainly more consistent with our traditional way of dealing with criminality, which would permit courts to view this business of cannabis as a whole, rather than focusing on one element.

Mr. Wise: Allow me to mention the experience in Holland, senator, where they have in fact effectively legalized possession of marihuana. I do not know whether it is *de facto*, or *de jure*; but the police totally ignore possession in open public by anyone, of marihuana. There is smoking of it, there is the using of it—

Senator Croll: They do that at Maple Leaf Gardens, too, I believe.

Mr. Wise:—and as far as we know, Holland has not suffered any apparent deterioration by virtue of that fact.

Senator Neiman: But how in fact do they decide when they are going to arrest somebody for trafficking? Where do they draw that distinction?

Mr. Rosen: They apparently do not, and that is why we suggested that if you treat cannabis as you treat speed, so that simple possession is not an offence, and possession for purposes is, then you can control the amount, at least.

Senator Neiman: I know Mr. Wise made some earlier comment with regard to speed, but in my mind it is just possible that the possession of a certain quantity of speed should be made an offence, and perhaps this will come.

Mr. Wise: I would not disagree with that at all.

Senator Neiman: I do agree with you that speed is a far more dangerous drug than is the case with cannabis, in the light of what we know of it today.

Mr. Rosen: I think we are in agreement with you that possession of speed by the trafficker for that purpose

should be an offence, but leaving that question aside, it is very simple to make simple possession of cannabis not an offence, and still have the tool with which to get at the trafficker.

The Chairman: It is 1 o'clock. We resume at 2 p.m. On behalf of the committee, Mr. Ruby, I want to thank you and your associates for your help today.

Mr. Ruby: Thank you all very much.

The Chairman: Representatives of The Quebec Bar Association and the Department of Justice of Quebec will be appearing before us this afternoon.

The committee adjourned until 2 p.m.

The meeting resumes at 2:00 p.m.

[Translation]

The Chairman: This afternoon, we welcome the president of the Quebec Bar Association and all his associates who are here to make a presentation on Bill S-19. Since it is the Quebec Bar Association, you will understand that I will not be totally objective.

Senator Flynn: You do not intend to renounce yourself.

The Chairman: No, I do not intend to. The president, Mr. Michel Robert, will introduce his associates. Mr. Robert.

Mr. Michel Robert, Q.C., President of the Quebec Bar Association: Mr. Chairman and honourable Senators, the Quebec Bar Association does not very often have the opportunity to make representations before Senate committees. I would like to say now that the Quebec Bar Association is naturally the organization which regulates the legal profession in Quebec. It represents 7,225 lawyers.

Immediately to my right is Mr. Serge Ménard, from Montreal, who has had considerable experience both as Crown prosecutor at the federal level and as defence lawyer. He has worked for the Justice Department of Canada and, on occasions, has had to institute proceedings under the Narcotics Control Act. He has since changed sides, if I may say so; he now works for the defence.

Immediately to his right, is Mrs. Micheline Audette-Filion, director of Research Services of the Quebec Bar Association. She is particularly responsible for examining all the bills introduced both in the Quebec National Assembly and in the Parliament of Canada and helps us draw up our briefs with the help of committees formed for each bill of concern to us.

At her right is seated Mr. Yvon Roberge, from Sherbrooke, who has also worked for the Federal Government in proceedings under this Act. It also happens that he sometimes works for the defence.

These persons are members of the committee we have created and their names appear on the first page of the brief. This committee has studied this bill and has prepared the brief.

I will invite Mrs. Micheline-Filion to make some opening comments. Then, the brief will be read by Mr. Serge Ménard. Mrs. Filion, please?

Mrs. Micheline Audette-Filion, Director of Research Services of the Quebec Bar Association: Mr. Chairman,

ladies and gentlemen, members of the Senate Committee on legal and constitutional affairs; it is with great pleasure that the Quebec Bar Association has accepted your invitation to submit a brief on Bill S-19, an Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code.

For many years now, the Quebec Bar Association has usually presented briefs on bills concerning the administration of justice and the people's rights. We regularly make representations to the Quebec Parliamentary Commissions.

Even if we have already had the opportunity to make recommendations to your committee and to that of the House, it is the first time that we appear before you.

I would like to make a preliminary comment.

For a certain time now, we have observed that the French texts of some bills are not quite satisfactory. May I give as an example the translation of the words

"... whom he reasonably suspects to have in his personal possession a narcotic; and"

by the words:

"qu'il soupçonne avec raison",

in clause 12 amending section 10(1)(b) in Bill S-19.

In the French text, there is not only a language mistake but also a legal one according to the Interpretation Act.

Senator Asselin: Which clause?

Mrs. Audette-Filion: Clause 12 amending section 10(1)(b) of the Narcotic Control Act.

Since the Interpretation Act stipulates that both versions are official, we do not see why it should be necessary to refer to the English text to know the real intent of the legislator.

Recently, last December, we made representations to the House of Commons Standing Committee on Justice and Legal Affairs on the Act respecting Canadian Business Corporations and we had then asked that the French wording of the bill be revised.

We were assured that it would be, thanks probably to the provisions of the new bill S-3, an Act to provide for a continuing revision and consolidation of the statutes and regulations of Canada. This Act has not been in effect for a long time and we hope that it will be a very useful tool for the quasi systematic revision of the French wording of all federal legislations.

And now, I leave the floor to my colleague, Mr. Ménard, who will talk specifically on Bill S-19 with which we are concerned today.

Mr. Robert: Thank you, Mrs. Filion.

[Text]

Senator Buckwold: Do you have any other references to translations that are not adequate and should be brought to our attention? I do not think you have to do it verbally now, but I am sure the committee would like to have such instances passed on.

Mr. Robert: Maybe we could examine this question and make representations in writing to the chairman at a later date, if you wish.

[Translation]

Mr. Serge Ménard, Lawyer, Montreal: Thank you, Mr. Chairman.

Bill S-19 is certainly a step in the right direction. Cannabis is not a narcotic. It was neither normal nor fair to impose upon the accused the very serious penalties designed to fight extremely more dangerous substances such as opiates.

Moreover, it is inconsistent to impose less severe penalties for more dangerous drugs such as LSD and STP. For example, in the present Act, the traffic in cannabis is punishable by life while the traffic in LSD is punishable only by a maximum of ten years, on indictment, and by only 18 months on summary conviction. There is no such alternative in the case of cannabis.

For possession, if the penalties are the same for cannabis and LSD, when the person is charged on summary conviction, in the case of an indictable offence, the maximum is three years for LSD and 7 years for cannabis.

For the import of cannabis, the maximum sentence is life imprisonment, the minimum is seven years while in the case of a more dangerous drug such as LSD, the maximum is only of ten years and there is no minimum. Moreover, for LSD, the proceedings can be instituted on summary conviction in which case, the maximum is of 18 months.

It is urgent that a legislation place cannabis in a class similar to that of other more dangerous hallucinogenic drugs if we want the vast majority of our country's youth to keep enough moral confidence in repressive laws to abide by them willingly rather than out of fear of the police system.

But the Quebec Bar Association does not believe that this legislation goes far enough in the right direction. Bill S-19 still provides for more severe penalties for cannabis than for other more dangerous hallucinogens while it should be the contrary; cannabis should be treated less severely than more harmful drugs.

The Quebec Bar Association submits that the law-making body should treat all offences relating to cannabis less severely than those relating to restricted drugs. Also, a great number of our members feel that it should enact the majority recommendations of the Le Dain Commission. The Bar Association also believes that Parliament should take advantage of this opportunity to give every person accused of offences under the Food and Drugs Act and the Narcotic Control Act the benefit of reasonable doubt of their guilt.

To begin with, cannabis and the presumption of innocence. If there is one legal system which receives the unanimous approbation of all Canadians, both French and English-speaking, it is the Canadian criminal law system inspired by the British law and based on the presumption of innocence.

To repress the non-medical traffic in drugs and narcotics, the Parliament of Canada has used its constitutional power in criminal law. Because of the seriousness of the maximum sentences provided for in cases of traffic, it is desirable that it be so. But recent precedents, 1971, as to the interpretation of terms such as "establish", "demonstrates" and "the onus of proof lies with", leaves no doubt that the burden of the proof lies with the person accused of possession with the purpose of trafficking whether in controlled and restricted drugs or in narcotics.

Bill S-19 is written in such a way that the onus of proof still lies with the person accused of possession of cannabis with intent of trafficking; as well as with those convicted of import on indictment if they want to avoid the minimum sentence of three years in prison.

The Quebec Bar Association believes that in one case as in the other, subject to following comments on import, the accused should be given the benefit of reasonable doubt and that consequently the bill should be amended for the following reasons:

First, before the Appleby decision, given by the Supreme Court of Canada on June 28, 1971, the accused had always been given the benefit of reasonable doubt.

Secondly, the person accused of traffic had the right to avail himself of the benefit of reasonable doubt. It is unreasonable that the person who has not yet done any trafficking should not be given the same benefit of doubt as to his intention.

Thirdly, for objectively more serious offences where the intent is an essential element of the crime, every accused is given the benefit of reasonable doubt concerning his intention. It is so particularly in the case of murder which differs from manslaughter in the intention of the person who caused the death.

Fourthly, this Act places the person who has been accused of possession for the purpose of trafficking and has contested the charge without success in a very difficult situation.

Fifthly, Canada has always been proud of being part of that group of countries who have a reasonable moral certainty that their prisons do not hold innocent people. In theory, to make the burden of proof rest with the accused is to give a legal base to a miscarriage of justice. It is inevitable that in the long run, it will happen and, when such cases will be discovered and made public, they will greatly discredit the criminal laws.

Accordingly, the Quebec Bar Association recommends that proposed sections 35, 43 and 63 of the Food and Drugs Act and section 8 of the Narcotic Control Act be amended so that their last lines read as follows:

If pursuant to the above, both parties have been given the opportunity to establish that the accused was not in possession of the drug or narcotic for the purpose of trafficking, then, whether the parties have availed themselves or not of that opportunity, the court must consider all the evidence presented during the proceedings and if it entertains a reasonable doubt concerning the intent of trafficking the accused had when found in possession, the accused must be acquitted.

Where possession remains an offence, the following should be added:

and found guilty of simple possession.

If the legislator decides to maintain the minimum sentence of three years for import or export of cannabis on indictment, under section 50.2(b)ii of the Food and Drugs Act, the wording should be amended so that it be clear that the proof required from the accused may leave a reasonable doubt and that this decision be taken by the court who heard the evidence. In the case of a trial by jury, the jurors must be adequately guided by the judge presiding the trial.

The penalties provided for by bill S-19 are more severe than those provided for other hallucinogens.

Traffic—To begin with, the definition of traffic in the bill is the one that can be found in the Narcotic Control Act and not the one in the Food and Drugs Act. It is wider because it contains the terms "give" and "offer".

We do not believe that the senators wish to consider the youth who passes along a cigaret of marihuana in a get-together as a trafficker of cannabis. We believe it is unfair to consider such an act as traffic in the case of cannabis but not in the case of more dangerous drugs such as LSD.

Import—The import of cannabis is dealt with more severely than the import of more harmful drugs like LSD, it is included in the definition of traffic and, therefore, punishable on indictment, by imprisonment for a term of not more than 10 years, but only to a maximum of 18 months, in case of prosecution upon summary conviction, without any minimum provided in either case. For cannabis, in the first case, the maximum penalty is 14 years, and in the second, two years. Furthermore, there is a minimum of three years in the first case, with one exception.

Possession—On the other hand, possession of cannabis is dealt with less severely than the possession of restricted drugs. The maximum penalties provided for the first substance are half those provided for the second.

Therefore, there is an inconsistency to be corrected by adopting a standard definition of the word traffic for all the substances mentioned in the Food and Drugs Act, a definition which would be more in keeping with the usual meaning of this word.

The criminal record—If the possession of cannabis is to remain an offence, the Quebec Bar thinks that the consequences of the criminal record will make some accused pay a price out of proportion with the objective seriousness of this crime.

Now, section 6 of the Criminal Record Act already provides for the confidentiality of some criminal records. The Bar thinks that the convictions of persons found guilty of simple possession of cannabis or drugs, as a matter of fact, we wanted to correct the submission to include "simple possession of cannabis or drugs", should be kept in the same way and should only be submitted on the same conditions and to establish the repetition of an offence".

Moreover, the Bar thinks that this record should be automatically destroyed after a certain period without repetition of the offence.

We also submit that provisions similar to section 8 of this Act would eliminate the possibility of a person being asked, on an employment application form, whether he has been convicted before for such an offence.

The minimum of three years—The Quebec Bar has been very surprised to discover that the legislator intends to maintain a minimum jail sentence for the import of cannabis. It is true that this minimum will apply only in specific circumstances. But, there are cases which are covered by these specific circumstances and which, we think, do not deserve a minimum jail sentence.

These cases involve more specifically young people who accept to carry cannabis for a low payment. They involve also those who, taking advantage of a trip in a country where good quality cannabis is plentiful and cheap, bring some back for their own use and for their friends.

Most of those young people are not criminals, in the sense that they would not have carried the other drugs

which they consider to be dangerous, or that they would not have committed other offences. Theirs is not the attitude of a delinquent, and the judge should be the one to decide the most suitable penalty. It is obvious that the maximum of ten years would enable the judge to sentence professional and unscrupulous traffickers to an adequate term of imprisonment.

Furthermore, we do not understand the logic of this measure. The possession of cannabis should rightly be considered less serious than the possession of LSD. Therefore, why a minimum sentence in the case of cannabis and not in the case of LSD? We know that good quality cannabis comes from elsewhere and that LSD can be made in any laboratory right here. But then, which is more serious, making LSD or importing cannabis?

Finally, we wish to point out that making the import of cannabis liable to a maximum of fourteen years, prevents the implementation of section 662.1 of the Criminal Code. It is perhaps what is wished, and the Quebec Bar thinks it is justified, but we must be aware of this consequence, because in case of trafficking in cannabis and of the import or making of drugs of restricted use, the judges will be able and can make the accused benefit from parole or unconditional release rather than convicting them.

The choice of procedure in prosecution—Traditionally, when the Crown has the choice of prosecuting by indictment or summary conviction it is sole judge of the exercise of this choice and may make an arbitrary decision.

When the maximum sentences provided varied from six months to two years, this arbitrary choice was bearable. But, for the last few years, the Quebec Bar has been noticing with concern that this arbitrary choice has more and more serious consequences due to the increasing difference between maximum sentences. It really reaches its climax in this Act, in subsection 2 of the proposed section 50 of the Food and Drugs Act, the cannabis part. Without giving any kind of explanation and without any judiciary or administrative control, the Attorney General's representative could prosecute so as to be able to obtain the imposition of a maximum sentence of two years or of a minimum sentence of three years.

The Bar is aware that this choice has been given to the Crown so that the import of small quantities may not make a person liable to too serious convictions. But, then, why allow the Crown to exercise this power without having to justify it publicly and without having to give the person concerned the opportunity to express his opinion?

We have already mentioned our opposition to the minimum sentence provided in this section. Should the legislator not take our opinion into account, we believe then, it would be very important to take away from the Crown the considerable arbitrary power this section gives it.

The Quebec Bar also notices that this arbitrary power goes beyond what is bearable in the case of offences for trafficking and of possession for the purpose of trafficking. However, since it is a problem which is not specific to the Food and Drugs Act, we shall limit ourselves here to express our concern. We are also concerned about the higher and higher sentences which can be inflicted by simple judges of the peace in the case of those new prosecutions by summary conviction.

In short, these are the main recommendations that the Quebec Bar wanted to make for the improvement of an Act which it thinks urgent to pass.

Before giving the floor to the President of the Bar, I wish to point out to the honorable senators that the majority of us were here this morning when the defence counsels of Ontario made their submissions. We have been very pleased to hear the questions asked by the senators. Personally, I have been very flattered by the comments of some senators that they expected from the lawyers, concrete suggestions in order to amend the legislations so as to meet their wishes. I must add that we have prepared this submission in this spirit. I must also add, that we have discussed and that we are prepared to express clearly our opinions on all the matters we have heard raised this morning.

Mr. Robert: Mr. Chairman, I would simply like to add some comments to Mr. Menard's, which however, do not commit the Bar for reasons I am going to mention in a while.

I would like to point out to the Senate the particular experience we have had during the preparation of this submission.

The Quebec Bar is not aware whether the majority of its members wish that simple possession of marijuana should no longer be an offence. However, in order to study this Bill and make the recommendations asked by the Senate, we have thought of setting up a committee comprising lawyers who are experienced in cases resulting from the Food and Drugs Act and the Narcotics Control Act, in the area of prosecution as much as in defence. Our committee also consisted of lawyers who practice before juvenile courts, namely the Welfare Court.

That committee has come to the conclusion that cannabis should be regulated like other controlled drugs. However, the Quebec Bar does not wish to support this opinion without being able to consult adequately its membership, and having had the opportunity of studying more extensively the whole problem. We still take upon ourselves to point out to this Committee the arguments presented in favour of this amendment:

first, it is, to all intents and purposes, the majority opinion of the Le Dain Commission;

secondly, cannabis would be regulated like all the drugs the non medical use of which is also common, and which are more harmful, like for instance, the mixtures of stimulants and sedatives vulgarly called "goofballs", the amphetamines, the mandrax, and all the psycho-active drugs which are unquestionably more dangerous than cannabis;

thirdly, it also seems that it is the solution reached by the majority of persons who study in depth the consequences of the use of cannabis, regardless of their previous opinion. It was notably, the majority conclusion of the United States National Commission on Marijuana and Drug Abuse.

This system may seem illogical because it seems to defend trafficking and allow possession.

In fact, the Act does not allow the possession of controlled drugs, except through medical prescriptions, but it considers that simple possession, although prohibited, is not an important enough offence for a criminal penalty to be warranted. The Act punishes those who are trafficking without permission. Drugs of which no medical use is known, or the medical use of which has become obsolete, are thereby withdrawn from the official market, but may

return if medical uses are again found for them or if health professionals want to use them for research purposes, without having to set in motion the complicated system of the legislative amendment which is fraught with emotion.

The Bar is convinced that heavy penalties have practically no effect on the illegal consumption of a particular drug. On the contrary, we believe that it is the realization of dangers of use for non medical purposes which influences most illegal consumption.

The Quebec Bar thinks, in any event, that trafficking in cannabis must be prohibited, because the present state of researches seem to show that the non medical use, mainly in large quantities, present some dangers to mental and physical health.

But, it is necessary to wonder whether those dangers are not so minimal, that in case of moderate or occasional use, simple possession, although prohibited and discouraged by the Crown, should not necessarily involve prosecution.

In fact, the Quebec Bar wonders whether cannabis would not be more adequately classified among controlled drugs, between more harmful drugs and those which are less harmful, some of them having a common non medical use which is only repressed through penalties for trafficking and seizure.

In any case, the members of the Bar and the members of the Committee will go on studying this matter. Thank you, Mr. Chairman.

The Chairman: Thank you, Mr. President.

Senator Asselin:

Senator Asselin: Mr. Chairman, first, I would like to thank the members of the Bar who have come here to visit the Senate and meet our Committee to discuss the bill being considered, and who have taken part in the preparation of the submission we have before us, and which may surprise several senators.

I would like to raise some points and also give my colleagues the opportunity to ask questions, because I am sure many questions will be asked.

I would like to ask you whether, in your opinion, this bill is an improvement to the previous Act?

Mr. Ménard: Certainly. In fact, it is what we said at the beginning of our submission. But we notice that whenever Parliament amends the food and drugs legislation, it retains some of its inconsistencies. We are convinced that this is due to the dreadful climate of emotion in which these matters are always dealt with.

But, finally, I hope you understand that a large part of our suggestions require, in fact, that the bill should be consistent in the sense that it should provide the same seriousness for drugs which can cause the same harm and that if you consider that a drug is less harmful than another, all the offences in relation to this drug should be punished less severely than all the similar offences in relation to the other drug.

Senator Asselin: Regarding the bill, there is the following question which I want to ask you: you know that the number of persons who use marihuana and hashish, is increasing yearly and we were given figures here, by the RCMP saying, I am giving it to you from memory, that in 1964, for instance, they arrested for possession, simply for possession, 360 persons, and that in 1974, if my recollection

is correct, they give a figure of 23,000 persons arrested for use, simple possession of marihuana and hashish. Which means that the problem has not been settled, and that it is increasing from year to year. Do you claim that this bill contains deterrents strong enough to prevent people, in the future, to use it as indicated by some figures?

Mr. Robert: If I may, Senator, if they precisely noticed that the number of users has considerably increased over the last years, with the severe penalties provided in our present legislation, one may wonder at this stage, whether severe penalties have any influence on the consumption of marihuana. It seems that recent experience indicates to the contrary, since we have severe penalties, and consumption is on the increase. Therefore, one does not have the feeling that it is through severe penalties, at the level which I would call criminalization, that we can succeed in decreasing its consumption, chiefly among young people. As emphasized in our submission, I think it is much more through the realization by people of the dangers which the use of these drugs offer rather than another, that their use may decrease. In other words, we believe much more in an education process of the people in order to reduce their use of it, than of a more severe process of enforcement. I think this is the substance of my answer. I do not know whether Mr. Ménard has something else to add, or whether some member of our delegation would have something to add to this rather basic aspect.

Mr. Roberge: I will perhaps add this. I think that the information directed to the public should immediately, as the President of the Bar said, relate to the fact that we have Acts which have too much teeth and which do not change anything in the situation. We have discussed it in committee. We have realized that you have an 18-year-old boy or girl or even a 15, year old who will be asked to import drugs to do a favour to someone. They will not think of the consequences. But, I think if you can point out medically or otherwise, the dangers of the use of drugs, mainly at that time, the harm will be stopped from the start. It is not by criminalities, but at the intellectual level that we are going to make people understand those things. There have been many discussions on this subject. There are pros and cons. I think we must first complete the studies on this subject, because the results are contradictory, and we may perhaps launch an information campaign afterwards.

Senator Asselin: Then, if obviously, the number of users keeps on increasing, if there is a larger number of people who go on using marihuana or hashish, if we pass legislation which has no deterrent effect on the persons who use them, don't you think the Crown should think of legalizing them in a certain way?

Mr. Robert: I think at this point research is not advanced enough to know whether really the moderate use of cannabis, and I am saying the moderate use, may have consequences on the physical or mental health of individuals. I think, as underlined by Mr. Roberge, that scientific reports are fairly contradictory up to a certain point. I don't think, the Crown should, if I may say so, take the risk of legalizing now the possession of marihuana.

Senator Asselin: It would be to control it.

Mr. Robert: What we are studying in the submission is the possibility the Crown has to prohibit its possession, but not to penalize possession by imposing a criminal offence,

if I may make a parallel, a little like the case of pornography. Pornography is not currently encouraged. But the possession of pornographic material is not considered a crime. One is not entitled to sell it, or to offer it for sale, but its possession is not in itself a criminal offence. One could easily draw a parallel, I think, between pornographic material, its possession, and the possession of cannabis. I do not know now whether Mr. Menard wishes to add something.

Mr. Menard: If I may, concerning your first question, report two kinds of personal experiences, because I think it is broadly what the senators and the members of the committee wish to know. Since I have left the Federal Department of Justice, six years ago, I have devoted from 50 to 80 per cent of my practice to defend persons accused of simple possession, or of possession for the purpose of trafficking in small quantities of marihuana or hashish. I haven't found that those young people were crazier than we were in our times. The main reason why the majority of them take cannabis or exchange it with a friend, is because they are convinced they do not risk any harm. It is the main reason why you have so many consumers now of cannabis in Canada and in the Western countries. I am absolutely convinced that the majority, I do not say all, because there is still a problem with some of them, but I am absolutely convinced that the majority of them would not take cannabis, would not exchange it and would not encourage the illegal traffic, if they run a reasonable risk of affecting thereby their mental or physical health.

The second type of experience I can tell you about, and which relates to the first, is the experience of all those who work in the drug community, one way or another, as social workers, lawyers or policemen, and you will ask policemen who will come here about it. We know very well that for the last year and a half or two years, there has been very little LSD sold under the name LSD. Here is why. The kids are afraid of LSD. They are afraid of hallucinations. They are afraid of thinking they are Mandrake, Tarzan or somebody else and of trying to stop trains or buses. They are afraid of thinking they are birds and of jumping from the balcony of a seventh or eighth floor apartment. They do not want to take LSD seriously, they are afraid of a bad trip. That is why there is almost no LSD sold anymore. But there is still a little quantity sold under the name of mescaline. But we all know that there is no mescaline on the market. However, there is an unjustified presumption in favor of mescaline, a favourable but unjustified presumption, because the kids say it is a natural drug. They are wrong on both accounts. First, mescaline is not a natural drug, but a chemical reconstitution of a product named "papayotin" which is a natural drug. Secondly, they are wrong because mescaline is so difficult to produce that what is sold under the name mescaline is not mescaline but a little LSD mixed with all sorts of things. Generally, it is phencyclidine, an anaesthetic which is no longer used. Very often, it is made out of "Quick", or any other commercial powderlike substance. So I asked the kids who were telling me "I have been charged with possession of LSD when it was not LSD but mescaline," "How do you know that it is mescaline?" They answered "It is easy, I took LSD before. With LSD you hallucinate, with mescaline you do not, and as I do not want to hallucinate, I take mescaline. Mescaline is a natural drug, that is why I take it." What they do not know is that, generally, and that is what I tell them, LSD induces hallucinations only when it is taken in small quantities. Thus, if they take a small quantity of LSD,

thinking that it is mescaline and that they will not hallucinate, they will not hallucinate. I think that this shows clearly that the use of drugs in significant quantities is determined by the dangers associated with them by the users.

Senator Robichaud: What do they do when they do not hallucinate?

Mr. Menard: They say that it is like "grass", like marihuana, but that it is better and not so hard on the throat.

Senator Robichaud: What is the state of mind of the person who takes it?

Mr. Ménard: They feel they are taking something which is as good as "grass" without running any medical risk.

[Text]

Senator Buckwold: Our witnesses are giving us the impression that people, because of danger to their health, will resist certain drugs. On this basis, how would you rationalize—

[Translation]

Senator Langlois: Mr. Chairman, on a point of order. I believe the witnesses have not been informed that they could use the simultaneous translation service.

Mr. Ménard: We understand.

Senator Langlois: It's to put you more at ease.

Mr. Robert: We understand each other very well.

Mr. Ménard: We practise a passive bilingualism.

The Chairman: They are more bilingual than some Senators.

Senator Langlois: It's matter of principle.

Mr. Robert: In Montreal, Senator Langlois, it is very hard for us to practise law without being bilingual.

[Text]

Senator Buckwold: It is also difficult being a senator without being bilingual. You made a very strong case that people will resist certain drugs because it is a danger to health. I am trying to find out from you by what means you would rationalize using that argument with the number of those who only use heroin.

[Translation]

Mr. Ménard: There has been a very slight increase in heroin use compared to the increase in cannabis use. There has been a considerable increase in heroin use compared to what it was before but there is really no comparison between cannabis and heroin use.

[Text]

Senator Buckwold: I do not think that is an answer. The fact is, here we have a dangerous drug that, on the West Coast, on the basis of evidence we have heard, has reached epidemic proportions. There may not be hundreds of thousands involved, but it is a large figure and it is a matter that concerns us. I would like an answer to my question.

[Translation]

Mr. Ménard: Yes, I will go on, Senator. If I go that slowly, it is because I take into account the simultaneous translation.

First, we have said in the presentation and in the answers we have provided that, in fact, it is not the case for everybody. What we wanted to say is that there are so many people today in Canada who use cannabis. And this is the case only for cannabis because they do not consider it dangerous. Moreover, I have said in a previous answer that, given proof that there might be a real danger, they would not all be discouraged and, when I say "not all", I'm thinking of those who have a tendency to use other drugs on top of cannabis. We must recognize that there is a certain proportion of the population which may have psychological, sociological or other reasons to use drugs and to voluntarily intoxicate themselves, be it through the use of alcohol, barbiturates, speed or other products, but this portion of the population is never as important as that which uses marihuana.

[Text]

Senator Buckwold: I do not think that is a satisfactory answer to my question.

Senator Asselin: It is an answer.

[Translation]

Mr. Roberge: Senator, I think that the following idea is underlying your question, namely that the use of marihuana brings about the use of LSD, brings about the use of—

[Text]

Senator Buckwold: No, I did not say that.

[Translation]

Mr. Roberge: I was wondering if that was not, in fact, the underlying idea. It may be, Senator,—

[Text]

Senator Buckwold: Perhaps you are not understanding my question.

Mr. Robert: Oh yes we do.

[Translation]

Mr. Roberge: Then if you will allow me, I would say, in answer to that question, that there might be an increase in heroin use, for example, like there is an increase in the use of certain medicine such as librium and valium, to name only a few. I think that it is more a world-wide phenomenon, or a North American phenomenon, because people are so uptight, they are looking for something new, they always want something different. I think that it is only because we are living in that type of an era. I think that is the answer I could give you.

Mr. Robert: I could maybe add as an answer, but I am sure that it is not the right one, that at present, severe sentences do not discourage people from using heroin, since we have now in our criminal law extremely severe penalties for possession and trafficking of heroin and we apply them in a very strict way. For example, this morning, you were informed of cases in which the courts of

appeal have sustained sentences of life imprisonment for traffickers of heroin. I do not think that we could find such a jurisprudence for cases of breaking and entering a private dwelling with the intention of perpetrating a criminal act, and for which the Canadian Criminal Code provides the same maximum sentence.

Thus, at present, as far as heroin is concerned, not only does the law provide for very severe penalties but, moreover, the jurisprudence applies them in a very strict manner. There is, however, an increase in heroin use and I am convinced, even if I am thus in a certain way acknowledging a weakness of my profession, that the solution will not be found by our profession, but will come from others such as psychiatry, sociology or, more generally, through the whole range of social sciences.

The Chairman: Senator Prowse.

Senator Asselin: I am not finished, Mr. Chairman.

The Chairman: I am sorry.

Senateur Asselin: J'aimerais terminer, si vous me le permettez.

The lawyers who appeared before us this morning have expressed, in the conclusions to their brief, the hope that the crime of simple possession be eliminated from our statutes, but when I consider the whole of the brief, it seems that you have approximately the same opinion and if you do not, please say so; is that it, Mr. Ménard?

Mr. Menard: I think, Senator, that if you are referring to the last part of the brief, containing supplementary remarks, you will note that we are not ready yet to recommend abolishing the crime of simple possession. We are questioning ourselves on the possibility of prohibiting possession, without attaching to it a criminal offence. That is the matter on which we are questioning ourselves at present. You will understand that we have not had time to consult all the members of the Bar on a matter which seems to us to be so basic and so important, because it reflects, I think, philosophical attitudes with regard to social structures and we do not want to suggest such a recommendation before we have had a chance to first complete our research and studies.

Secondly, without having the occasion of consulting all the members of the Bar, we are contemplating the possibility of prohibiting possession, as was the case with pornography, without attaching to this prohibition a criminal offence. That is what we have in mind, although it does not constitute a recommendation of the Quebec Bar.

Senator Asselin: I am glad you clarified your position. A final question, Mr. Ménard.

Mr. Ménard, on page 11 of your brief, you refer to the choice of procedures which the Crown prosecutor, dealing with this case under the terms of this Bill, will be able to proceed by way of summary conviction or indictment. This is not new insofar as the Criminal Code is concerned. The Code is full of such provisions, so why do you make that exception?

Mr. Roberge: Senator, if you will permit me, I will answer this question because I may have had more occasions of working with the police. We must not forget that the human factor has an extremely important role to play in this respect. You can have, because the Crown Prosecutor, his role—

[Text]

Senator Buckwold: Mr. Chairman, the translation is not coming through on this.

Senator Croll: It is not coming through on mine either.

Mr. Roberge: I can speak in English for a while.

The crown prosecutor at a given moment may have to discuss the problem with officers of the RCMP, and for certain reasons these police officers may have a grudge against somebody. I am not speaking specifically here of infractions that could happen in a large city, or, for that matter, in the country, but let us say in smaller cities. They may have checked on a particular person for quite a long time and then suddenly they have him. Then they say, "We will proceed by way of indictment"—and here we must keep in mind that the same facts in a large city would not necessarily bring the same conclusions on the part of the Crown prosecutor as they would in the smaller city. In addition, for example, the importation of marihuana in a quantity of, say, 25 pounds in Montreal would be quite common, but 25 pounds in Sherbrooke, Trois Rivières or Sudbury would be quite a different matter. There it is going to make a splash in the newspapers. So in that situation you might not have the same method of prosecution taken by the crown prosecutor. You can even have the situation where, depending on whether the police like the guy or not, he can be sent to jail for three years or he can be let go with a \$500 fine. So I think that this is too important a question to give to the crown prosecutor—and I was one—the choice of proceeding by way of indictment or summary conviction. That is the reason why we have realized that.

Senator Buckwold: The translation is coming through now.

[Translation]

Mr. Ménard: May I add something that is not very long. What is new is not the choice between the modes of prosecution, but the consequences of that choice. As we have indicated, traditionally, the maximum sentence by way of summary conviction was \$500 and six months imprisonment, and by way of indictment, was two years. But at that time, in spite of the fact that it was arbitrary, it was bearable, because it was compensated by ancillary procedures. For example, in the case of indictment, there was a right to a preliminary inquest, the right to go before a more experienced and more impartial judge, because he has been appointed for life, whereas in the case of a judge of the peace, it is a lawyer who is judge, at night.

But when the risk amounts to a difference of several years imprisonment, I think that the fact of allowing somebody to make that choice arbitrarily, without respecting the fundamental rule "*Audi alteram partem*", is to make of it a prohibitive power.

Senator Flynn: How will you proceed? Will you go before a judge, and he will have to make the choice?

Mr. Roberge: No, all we are suggesting is this: that it be done by way of indictment.

Senator Asselin: Abolish?

Senator Flynn: Abolish the distinction?

Mr. Roberge: Abolish and, at the same time, abolish the minimum because, as you know, and we stressed it in the

brief, there is quite a difference between importing small quantities for your own personal use but, often, it is to help somebody else whom we do not know, or the importer—we must give the judges the possibility of exercising their judiciary power. It is their function to do so, to assess the facts, and to decide by themselves. In some cases, two or three years may not be enough. But in other cases, when it is a person who has done nothing but has been caught, maybe through blackmail or something else, the judge has to sentence him to three years of imprisonment, when that person is not really responsible; he does not want to give the names of the people who are really responsible and thus he has to bear the punishment. So we must give a certain latitude to the courts.

[Text]

Senator Prowse: I am sorry I do not have the pleasure of speaking in both languages. If I understood your last remark correctly, your suggestion is to do away with the distinction between the indictable and the summary conviction and have a single procedure whereby we would go by way of indictment, but remove the minimums?

Mr. Roberge: Yes.

Senator Prowse: In all cases?

Mr. Roberge: Yes, for importation, because with respect to importation the law provides a minimum.

Senator Prowse: It is only in cases involving minimums that the hands of the court are tied?

Mr. Roberge: Absolutely.

Senator Prowse: And if we were to get rid of those minimums altogether, then the courts would have very wide discretion, from nothing right up to the bingo, to be able to deal with cases as they felt necessary?

Mr. Robert: Yes.

Senator Prowse: And it might be necessary then to change the provision with respect to absolute discharges where they are not permitted in cases in respect of which there are certain maximums?

[Translation]

Mr. Roberge: As was mentioned before, Senator, section 662.1 enables the judge to grant probation, provided the sentence is less than 14 years. But as soon as it reaches 14 years, the procedure is different.

Surely yes, Senator. That is what we are asking you to do, in a coherent manner, and not the way Parliament did it in 1969, i.e. that you recognized in this Bill, through the penalty you attach to simple possession, that simple possession of cannabis is less serious than that of other restricted drugs. I think that it is true. But then I think that you should also consider that trafficking in cannabis should be defined in the same way as it is for restricted drugs and not more severely. Now, as you consider cannabis to be less dangerous than LSD, you should consider that importing cannabis is not more serious than manufacturing LSD. Consequently, include importation in the definition of trafficking, as we are doing now for the restricted drugs, or change the rules applied to restricted drugs, if that is your opinion. It is not ours. If that is in your power, change the definition of trafficking for restricted drugs and change the definition of importation. But, we feel that

this is a courageous standpoint, and that it might be misinterpreted by a certain class of the Canadian population. However, we would first like that this courageous and urgent measure be applied in the most coherent manner possible.

[Text]

Senator Prowse: Yes, but if we kept the maximums below 10 years, we would be home free.

Mr. Robert: Below 14 you would be okay. So it is 10 years.

Mr. Ménard: It could be 13.

Senator Prowse: Another point that gives us a great deal of trouble is that we feel that the present legislation has the effect of swatting a mosquito with a hammer, the hammer doing more damage than the mosquito. However, we do not want people to be bitten by mosquitoes, anyway, so we have come this far and provide in section 48, at page 4, the penalty for what I will describe as simple possession, without any complications at all. Under that provision it is just an offence punishable by summary conviction, and that is all. There is also the offence under section 49, of course, of possession for the purpose of trafficking, which must be treated differently. We are concerned that if we go too far in lightening the offence, to take that out, or even when we bring it down, there is the danger that someone interested in distributing this drug will say, "Well, look, even those stuffed shirts in the Senate decided that this was not a very serious thing, to have possession. They really mean that there is no danger for you to use it." Now, the state of the art, as far as research goes, is that the more we listen to it the more confused we become as to whether there is an imminent danger. We can only say that no one can decide at the moment whether it is dangerous.

Do you feel that by what is suggested in section 48 we have made a useful step toward getting away from the social damage which has undoubtedly followed from the very harsh penalties that have been provided in the law up to the present?

[Translation]

Mr. Ménard: No, Senator. My experience, and I think it is the experience of all those who have worked in this particular field, is that many youngsters would never accept to carry or trafficking anything else than cannabis, because they are convinced that cannabis is not dangerous at all. I bring to your attention the fact that, for example, it is much more difficult to try to import marihuana than to try to import heroine, because, for the same quantity, you can at least increase a hundredfold your profit. Buy, my personal experience is that many youngsters who have tried marihuana and hashish, would never have tried any other drug. If they have become acquainted with marihuana and hashish, even to the point of trafficking in those drugs, it is because they were convinced that they were not dangerous. Also, at the beginning, maybe it is less true today, but at the beginning certainly, a certain number of persons believed that they were doing a service to humanity in introducing people to a new drug which, in their opinion, was less dangerous than alcohol and cigarettes. But I agree with you that a certain number of drug traffickers are not troubled by any scruples and would traffic in hashish only for the money they can make. It was just because it was a profitable business, or the other way

around, that such people were probably trafficking in alcohol during the prohibition. But most youngsters who are brought before the courts because they were carrying suitcases full of marihuana, would never have carried another drug.

[Text]

Senator Prowse: Well, is it particularly coherent and logical as it applies to the young people with whom we are concerned? We are not worried about their fathers and grandfathers. When we are dealing with possession and when we get to trafficking and attempt to draw a distinction between trafficking for profit and the social sharing of a joint, most of us would feel that a satisfactory legal definition should be included such as was suggested this morning. This would provide that from the trafficking we take out the word "give". I see you advocate deleting the word "offer". I believe from my high school days that is the correct translation.

Mr. Robert: That is correct.

Senator Prowse: That would mean the deletion of section (b) of the definition: "to offer to do anything mentioned in paragraph (a)", or did you mean "offer" in the way I take my packet of cigarettes and offer it around?

Mr. Roberge: That is trafficking according to the law.

Senator Prowse: That would be distributing?

Mr. Roberge: Yes, or offer to give.

Senator Prowse: An offer to give?

Mr. Roberge: Yes.

Mr. Robert: If you are smoking a joint, and of course you are not—

Senator Flynn: You never know!

Mr. Robert: —then you would offer it. If you offer it to your friend and he refuses, it is traffic within the meaning of the act as stated before you now.

Senator Prowse: The aspect which concerns me when we start to ease up is that when we come to trafficking, aside from two roommates sharing a joint, or two persons in a social situation, there is a fear, on my part at least, that those who are responsible for the importation of very large quantities of marihuana know also where to obtain very large quantities of heroin. In other words, the person trafficking in one type of drug is probably trafficking in all types of drugs, and we are faced with a different type of behaviour when we come to trafficking, particularly when it is for profit, than that facing us when we are dealing with what I would term adolescent experimentation; or perhaps with other people who are just playing with something where they feel they are titillating their sense of adventure without endangering their immortal soul. Would you agree that there is a substantial difference between trafficking and simple possession?

[Translation]

Mr. Ménard: They often do that for their friends.

[Text]

Senator Buckwold: Do they not do that for profit?

[Translation]

Mr. Ménard: Some get financial rewards. But some do not get any money for that. I have defended certain persons who had brought back from Morocco one kilo of hashish, in order to share it with their friends afterwards. I do not believe that those persons are traffickers. I am sure that they would never have imported heroin. I am not saying that some people do not import marihuana for the sole purpose of making money, but I say that many people accused of that offence do it because they are convinced that, morally speaking, they are not committing a crime.

[Text]

Senator Buckwold: Are you trying to leave the impression with us that traffickers are good fellows who want to help their fellow men?

The Chairman: No, no.

[Translation]

Mr. Ménard: No, Senator, I am trying to say that there are two categories of traffickers and that courts should be free to distinguish between them.

[Text]

Mr. Robert: And you cannot do that when you have a minimum. That is what we mean.

[Translation]

Senator Langlois: Mr. Chairman, let me say first that it is my pleasure to join my colleague, Senator Asselin, and thank the President of the Bar and his team for coming here this afternoon to tell us their opinions on the legislation before us, and to thank them especially for the objectivity of their submission.

I noted with pleasure that the President of the Bar stressed the fact that the brief presented to us had been prepared by a working team composed of counsels for the defence and prosecution attorneys. That is why, in my opinion, the brief is so unbiased.

Now, I would like to ask a few questions. If my questions are limited, it is because the brief is so precise, so clear, that its reading eliminates any question.

My first question concerns the recommendation appearing on page 8, which reads:

Furthermore, the Bar is of the opinion that this record should be automatically destroyed after a certain period of time without repetition of the offence.

This recommendation is very similar to the recommendation we have already received from the CMA (Canadian Medical Association) and which, nevertheless, is different from the present one because, at first, it recommends that no criminal record should be established or in the absence of that, that the criminal record should be destroyed after a period of time of two to three years without repetition of the offence. I note here that the Bar does not fix any limit to its recommendation. I would like to know what they had in mind when they presented that recommendation, and, what they mean exactly by "after a certain period of time without repetition of the offence"?

Mr. Robert: You will understand, Senator, that, the brief having been prepared by defence and prosecution lawyers, it is the result of a compromise. We did not have time

enough to complete this compromise in determining a precise period of time. It was rather a question of principle. We wanted to direct the attention of the Committee on the fact that the criminal record should be used only to know whether the offence has been repeated or not. I think we should not stigmatize somebody with a criminal record unless we want to know if that person has committed an offence before, because, obviously, this would have an effect on the penalties. That is the object of the recommendation. The logical consequence of that, is that, after a certain period of time without repetition of the offence, the criminal record should normally be destroyed because, without that, it would be possible for a person to be accused of backsliding 30 years after the commission of the first offence, which would just seem to me absolutely exaggerated. If I may suggest a figure which has not been—my colleague at my right suggests three years, the one at the end of the table suggests five years.

Mr. Roberge: Four years.

Senator Flynn: Three years and a half.

Mr. Robert: If I may suggest a period of three to five years, I think that period would be appropriate. Incidentally, I think that the legislation on identification of criminals also provides for a period of five years.

Senator Langlois: I interpret your remarks and, given your very objective remarks. I understand that you do not want to let us know which one of the two groups had the greatest influence in the preparation of the brief.

Now, I come to another recommendation, which is much more an observation than a recommendation, and which we find on page 2 of the Appendix, fourth paragraph, which reads:

On the contrary, we believe that it is the perception of the dangers of the use for non-medical purposes which has the greatest influence on the illegal consumption.

Still on marihuana. A recommendation has been brought before this Committee to the effect that the present legislation should not come into force until a massive education campaign, at the national level, on the danger of marihuana has taken place. I would like to know your opinion, and the opinion of your colleagues, on this recommendation by another group?

Mr. Robert: The problem I see concerning that recommendation is that the experts are not of the same opinion with regard to the imminent danger, or true danger of a moderate use of cannabis or hashish. I think a senator has already said that the more we listen to experts, the more confused we are. Can the Government take the responsibility of a national campaign, in order to inform the public on the danger presented by a moderate use of cannabis, when it appears that this has not been verified by facts at a scientific level? That is the reserve I would make.

However, the remarks that you find on page 2 concern all the drugs. It would certainly be useful to prepare an information campaign in order to give information on the dangers presented by the use of other drugs less severely punished, as Mr. Ménard has just mentioned, such as LSD or STP, the use of which presents much more dangers than the use of cannabis. I think especially of some drugs—which are called in English hard drugs—such as heroine et cocaïne, the danger of which, I think, are absolutely unquestionable, dangers that have been scientifically established, for both physical and mental health.

Mr. Ménard: If I may just add something, senator, I would say that I think that there is an immediate need for a new legislation, because the present legislation creates a real injustice in considering the cannabis as a narcotic. I think that it is senator Croll who, a moment ago, stressed the fact that an Act that is unfair discredits all the other Acts in the opinion of the population concerned. Moreover, I am sure that the same thing happened for a large number of the youngsters in recent years with the Act concerning marihuana.

Senator Flynn: In order to make the campaign.

Mr. Robert: Yes, certainly.

Mr. Ménard: And, at the same time, I am convinced that the only fact that a legislation has been proposed has already given rise to a public issue on that subject, has authorized the media to discuss that question and I am sure that an information campaign is already going on.

Senator Langlois: Now, also in the Appendix of your brief, in the last paragraph of page 3, it is written that:

The Quebec Bar wonders whether it would not be advisable to include cannabis in the controlled drugs—

Must I understand by that the Bar considered that the passage from the present situation to the situation of controlled drugs, where the possession would not be an offence, would constitute a necessary step in a more or less near future?

Mr. Robert: Well, I do not think that this is a necessary step—pleonastically speaking. I think that it would depend essentially on the state of the research on the exact dangers of cannabis. It is really possible, senator, that the use of cannabis becomes obsolete in a few years. This is really possible, because I think the use of cannabis is mainly a question of mood in the civilisation in which we live. Our civilisation may change rapidly and then the problem may disappear. But, as long as we do not have more precise information on the exact dangers presented by the use of cannabis, I think that, it is my opinion at least, it will remain difficult to go through that step; in the immediate at least it would be difficult. So, this step will not, necessarily, be a necessary one. It is possible that it will not be necessary at all.

Senator Langlois: I would really like to share your optimism. However, we have received from practitioners a testimony to the effect that it will perhaps be a necessary step in a rather near future.

Mr. Robert: If we come to the conclusion, for example, that cannabis does not present more dangers than the use of cigarettes and the use of alcohol for health, both for physical and mental health, I do not see why a legislative body would prohibit the use of cannabis while it does not prohibit the use of cigarettes or alcohol. It seems to me illogical in the determination of the priorities or penalties that a State must provide in full conscience.

Senator Flynn: And then, what?

Mr. Robert: Then, what?

Senator Flynn: Must we pass this piece of legislation also?

Mr. Robert: Personally, I think . . .

Senator Flynn: I do not understand why, even if we do not have any evidence, the question surely is controversial, you seem to take for granted that there is no established evidence that the cannabis is dangerous.

Mr. Robert: No, but I think that . . .

Senator Flynn: Then, you say that we must pass a legislation that would be a preventive measure. I think that the Bar's attitude is really extraordinary.

Mr. Robert: Extraordinary, why?

Senator Flynn: Taking preventive measures and passing a legislation that could turn out unnecessary look to me extraordinary.

Mr. Robert: We have not said that the crime of possession should disappear. We have said that we are asking ourselves questions on that subject. I do not think that we have said we were recommending the abolition of the crime of possession.

Senator Flynn: If cannabis is not dangerous.

Mr. Robert: I do not know if it is dangerous or not, and I think you do not know either.

Senator Flynn: If you do not know, you cannot draw the conclusion that we must pass a legislation should cannabis be dangerous, is that your position?

Mr. Robert: Well, there is already a law. It is there. It already exists. The legislator thinks that the use of cannabis is detrimental to the physical and mental health.

Senator Flynn: Does the Government agree?

Mr. Robert: The Government thinks so because otherwise, the law would have no reason to be. I think that it was evidenced here. I have not been here all the time but according to some senators the scientific aspect of the question has been evidenced i.e. that cannabis would be dangerous for physical and mental health but you have no answer.

Senator Langlois: I should mention that the Committee has been presented with the results of an expertise conducted on 3,000 students, and showing traces of cannabis in the human system, mostly in the fats—that cannabis is not eliminated by the system, and that it is absorbed most by the cell walls and particularly the brain cells. The study showed a considerable reduction in the students ability to maintain academic performance, and a considerable and rapid loss of memory. I think that this is enough to convince anyone that they should not play with drugs nor use them in a foolish way.

Mrs. Audette-Filion: The views are contradictory. We do not know what are the results and what are the dangers.

I would like to mention—I do not know if you have seen it since it is very recent—an article which appeared in the March 75 issue of the *Consumers Report*, and deals with a survey, which seems serious and scientific, of the use of large quantities of cannabis, over several generations in Jamaica. The results were that from a scientific point of view, they could not be certain that it was dangerous.

So, the views are of a contradictory nature, and they should not serve as basis on which to decide of the opportunity to legislate, because we are no more advanced today than the LeDain Commission was in 1970 and 1972. But we

are facing a problem that must be solved in spite of everything.

Mr. Ménard: In short, Senators, our recommendations are based on what we know for sure: first, that cannabis is not a narcotic; secondly, that cannabis is less dangerous than the restricted drugs like LSD, STP etc. We really believe, Senators, that if we cannot assess the danger with accuracy, it is preferable to maintain the prohibition without providing a more severe penalization than what is now, but also that it is better to maintain the prohibition than to have the Government condone the distribution.

Senator Langlois: That we should not limit ourselves to the control of drugs.

Mr. Roberge: It might be right to add this: I think that everybody, ourselves included, have understood that, in our deliberations, we have tried to find a solution to the following problem: young people who, for an occasional usage, have a criminal record. It is unfortunate for them, and I believe that the Government is precisely looking for a way to solve that problem. It is much more in that direction that we went ahead with our research and our work.

[Text]

Senator Neiman: I would like to add my personal note of gratitude to the bâtonnier of the Bar of the Province of Quebec for the comprehensive brief presented here. In my opinion, it is extremely helpful and will be to us all when we are considering these points.

You may or may not know that several witnesses who appeared earlier agreed with many of the recommendations you have made. These witnesses include a group of lawyers who attended from Toronto this morning. That might allay some of Senator Buckwold's fears in feeling we were hearing only the defence point of view today. He now knows that we have heard from both the Crown and the defence, who do agree in many respects. I will not dwell on them, but I would like to concentrate on the points on which you agree.

That group made certain recommendations, on which I would like your comments. It was suggested this morning that perhaps we should put cannabis under Schedule G of the Food and Drugs Act and simply treat it in that manner. It could then still be treated as a controlled drug. Would this meet the type of recommendation you make, by which we could use it and keep it as a controlled drug?

[Translation]

Mr. Ménard: No, we did not want to go that far without first consulting all of our members. We did not want to go that far. Moreover, we wanted to submit a responsible report. But, it is obvious that this is the opinion of some members of the Committee. Some members would have gone as far as to endorse the recommendation made by Professor Bertrand of the LeDain Commission. But, we felt that the position of the Quebec Bar should be more responsible. That is why we wanted to base our suggestions on what we knew for sure, on the dangers of the drug, and secondly, on the general philosophy of our penal law, that is to say to find for this drug, which is potentially dangerous an appropriate place in the existing Canadian law, which is certainly not the one it has now.

Thirdly, we also wanted to take into consideration, a little for you, as for the members of the House of Com-

mons, the political impact a certain decision would have on the population which may not necessarily have the same quality of information the Senate or the House of Commons are provided with. Although most of the Committee would have agreed to recommend that cannabis be included in the list of controlled drugs and that consequently, possession should not be an offence, we felt that it represented for all the elected representatives an unreasonable political risk.

Mr. Robert: We should say that the risk is probably less for the Senators.

Senator Langlois: A supplementary question, Mr. President.

You referred to the composition of your Committee. Is your Committee large enough to represent more or less all spheres of the Bar of the province?

Mr. Robert: No, and this was not our object. When we establish Committees to have them write briefs like this one, they are rather made up of specialists in the field, because the representation of the various regions is made through the organizations of the Bar, either the General Council or the Administrative Committee and, if you refer to the first page of our brief, you will find a list of the people who have worked on that Committee. There is Mr. Serge Ménard from Montreal, who is here now, as well as Mr. Yvon Roberge, from Sherbrooke, Mr. Robert Sacchitelle, one of the Attorneys who works mainly for the Social Welfare court in Montreal—Mr. Serge Authier, provincial Crown prosecutor in Montreal and Mr. Pierre Valois from the Social Welfare Court in Montreal. I should add that Mr. Sacchitelle is also a member of the Legal Aid Bureau of the Legal Services Commission in Montreal. Thus, you have three persons, if I may say so, representing the Crown, and two persons for the Defence, if we can classify them in this way.

Mr. Roberge: Senators, if you will allow me, I have noticed in the brief submitted this morning by the lawyers from Toronto, a reference to the Immigration Law. We had made no reference to this law, maybe because we had forgotten.

I practice in a town near the States' border—they call us the "borderline lawyers". I have quite often had to charge American citizens with simple possession, when they come to Canada for the week-end and bring 8 or 10 cigarettes of marihuana. They are first incarcerated. They must appear before a judge. Then they are fined and they often cannot pay. We hand them over to the Canadian Immigration authorities who in turn send them to the American Immigration officers who lodge a second complaint for possession.

I think it is really too much. These people receive a double punishment, and it does happen quite often.

The brief presented this morning by the lawyers from Toronto mentions this anomaly—maybe it does not give all those facts—but, I want to draw your attention to the fact. As far as I am concerned, I completely agree with their remarks and I do not believe that in the case of simple possession, an offender should be charged in Canada and then charged again by the American Immigration authorities.

Senator Flynn: How can a person found in possession of marihuana here in Canada be charged of an offence in the States?

Mr. Roberge: Because they are arrested at the border. If you cross the border with marihuana, it means that you had it in your possession before and that you have committed the offence in the United States.

Senator Flynn: It does not necessarily result in trafficking.

Mr. Roberge: But, in fact, I know that this is what they are doing.

Senator Flynn: Moreover, I know that they do it quite often in the United States.

[Text]

That is probably why this bill is before the Senate.

[Translation]

Mr. Roberge: I must say that we have received directives from the Department of Justice which said that under normal circumstances, when the defence asks for total discharge; we should make no objections. Those are the directives we have received from the Department a year and a half ago if not two years ago. I don't know if they have been implemented. But, I think that a request for total discharge, for a first-time offender, especially if the offence is simple possession of a cigarette or of a small quantity, would be quite sufficient. This goes along the lines of our recommendations. Let's say that we would also suggest that there be no criminal record, because now even in cases of total discharge, the record shows that the individual has been unconditionally discharged.

Senator Asselin: There is still a criminal record.

Mr. Robert: I think that there is a transfer under section 6.

[Text]

The Chairman: Senator Neiman, have you any further questions?

Senator Neiman: Yes, I have one more: It has to do with the penalty for the offence of possession. We have heard many expressions of opinion that for young first offenders charged with possession only there should not be a criminal record. We are all applying our minds as to how this best could be accomplished. This morning we heard from a member of the group of lawyers a recommendation that they be treated as offenders, with the idea that at the end of one year, or two years, depending I would think upon how serious the judge considers the offence to be, the record be erased automatically. Would you agree that this would be the best manner of handling this, by allowing the judge simply to treat first offenders along those lines?

Mr. Robert: Yes. It is under section 6 of the Criminal Records Act. It is a limited use, but he still has one.

Mr. Menard: The law says he is deemed not to have been convicted.

[Translation]

Senator Robichaud: I think that you partly answered my first question in answering the question of Senator Langlois. You represent the Bar Association, but I noticed that in your brief, which is well written and very detailed,

you have mentioned quite often that the "Quebec Bar believes" etc., and that you signed "le Barreau du Québec." However, this morning the four lawyers for the defence have appeared on their own behalf, and not on behalf of the Ontario Bar. For the record, can you ascertain that what you say is really endorsed by the Quebec Bar because you have told several times: "We have not consulted the whole of the Bar Association"? There is a difference between a group as important and as commanding as the Quebec Bar Association and some individuals. So, for the record, can you confirm that you speak here in your brief on behalf of the Quebec Bar and not on behalf of one of its committees.

Mr. Robert: Senator, I think that the brief which ends on page 12 has been signed by the Bar Association and represents the opinion of the Bar as expressed by its main officer, namely your humble servant. The law of the Bar says that the president is the representative of the "Ordre des avocats du Québec". He is the chief of the Order and it is he who has the power to state the opinion of the Bar.

Senator Robichaud: You are telling us that you have the Bar's authorization to say what you have said in your brief.

Mr. Robert: I must say immediately that in the supplementary remarks, where they are to be found, which do not contain any recommendation we do not speak on behalf of the Bar of Quebec. But for the first part, of course, we are expressing the views of the Bar of Quebec.

I would like to add that under a 1972 amendment to the law of the Bar the president as well as the Vice-President of the Bar of Quebec, are elected by all the lawyers in Quebec, that is to say by 5,225 members, and not by an executive committee, as you may have in New Brunswick, in Ontario and in the other provinces.

Senator Robichaud: We congratulate you.

Senator Langlois: I hope you are not shocked. The reason for those remarks is that an association, the Medical Association of Canada, submitted a brief which, the members of this very association told us, did not reflect the views of their association. My last question is this one: Has this brief been sent to all the members of the Bar?

Mr. Robert: No. It has not. We do not send all our briefs to all the members of the Bar. Because it would obviously be too costly. We send only the briefs that seem the most important. We must say, Senators, that we submit to the National Assembly of Quebec at least twenty and perhaps thirty briefs annually on an infinite variety of bills. It is the function of our research service. We are beginning now to submit briefs to the Parliament of Canada, and we once made representations to the Croll-Basford Committee. We also made representations concerning the Canadian Commercial Corporations Act. We are doing it again this morning. We would like to submit more briefs to the Parliament of Canada. Unfortunately, our resources are limited to a certain extent. We should extend our research service. But we make, I think, many representations to the Governments on bills which are tabled before them.

Senator Robichaud: May I go on speaking? I have other questions for Mr. Ménard in particular. I have noticed in the remarks and in an answer to a question asked by a Senator, that he said: the more severe the penalties, the more widely the drug is used I do not know if I was wrong. I even wrote it—

Mr. Ménard: No, you have misunderstood me or I have expressed myself in the wrong way. But I meant to say that the seriousness of the penalties does not seem to have an important impact on the non-medical use of drugs. It is rather the seriousness of the dangers as seen by the user, which has an influence. I even specified in answering a question of another Senator, that I am perfectly aware that it is not the case for a certain group of individuals. But it is certainly the case for the vast majority of those who have used marihuana or cannabis.

Mr. Robert: If we have to rely on severe penalties to discourage the use of cannabis, I would say that the experience of the last few years has been disastrous.

Senator Robichaud: Then, you are maybe corroborating what I just said.

Mr. Ménard: No, it does not encourage them, it has no effect.

Senator Robichaud: Could you extend your principle to other crimes, for example, rape; the stricter the penalties, the greater the number of rapes, or burglaries?

Mr. Robert: Well, I think, Senator . . .

Senator Robichaud: Is that a philosophy that you are trying to . . .

Mr. Robert: No, I think that our brief indicates that possession of cannabis is a crime, or an offence which has very particular characteristics and that cannot be compared, for example, to a crime which presents *malum in se* characteristics, such as murder or rape. I do not think, for example, that all our young people who use cannabis are convinced that they are committing an act that is bad as such, that is *malum in se*. On the contrary, I believe they are convinced that they are doing a perfectly legitimate thing, which is simply prohibited. So, I do not think that we have to exceed the issue of possession of marihuana and apply the principles or some philosophic attitudes expressed in the brief, or other crimes or offences which are, by their nature, very different.

Senator Robichaud: A final question, Mr. Chairman.

The Chairman: Time is flying by. We still have quite a considerable brief from the Quebec Department of Justice, and Senators Godfrey and Prowse still have some questions. I had hoped that this question had been asked.

Senator Robichaud: A last question, a very short one.

The Chairman: Very well, but make it very short.

Senator Robichaud: Very short. Mr. Ménard, once more, you told us, with some supporting proof, that sanctions are more severe for the person who possesses or uses cannabis; they are harsher than those applicable to a person who uses or possesses LSD, although the damages due to LSD are greater than those caused by cannabis, and you recommend that penalties be greater, be similar; how do you explain the rationale? If LSD is more dangerous, why would penalties in this case be the same as for the use of cannabis?

Mr. Ménard: In my opinion, it could be so. And that is exactly what the bill is doing, concerning possession. But what surprised us in this bill is that penalties for traffic and importation of cannabis are harsher than those applicable to importation and traffic of LSD. When we say similar penalties, it is because in truth, there is not such a

big difference between the danger of using LSD and that of using cannabis, and the other action is that of trafficking, which implies illicit profits, and that is a big difference; if you want, that could justify the lesser penalties for possession of cannabis by comparison to LSD, but both cannabis traffic and LSD traffic are the same, although they are of course less serious than the traffic of other narcotics. But we could also, if we want, divide into two categories all the offenses related to cannabis, as you have done for possession; and we would not see any objection.

Mrs. Audette-Filion: I would like to add a few words in reply to Mr. Robichaud. When we say that it was mostly the perception of the danger of limiting the use of cannabis, and not the fear of criminal penalty, that is also the understanding of the LeDain Commission, and the conclusion in the report of the Commission and that of the American Commission. The same conclusion seems to have been reached in some papers and speeches made in the name of the American Congress on Alcohol and Drug Problems, in San Francisco, in December 1974, where some people engaged in research in this area, doctors and scientists, have also concluded that it is not the fear of criminal penalty which will prevent the youth from relapsing into the use of cannabis, but rather make their understanding of the danger or let the mass media influence them.

[Text]

Senator Godfrey: Mr. Chairman, I have a question to ask about something which I rather think we have taken for granted when questioning the various witnesses, and that is why I bring it up at this late hour. I have had no experience of the criminal law except insofar as the Combines Investigation Act is concerned, so I just wondered what was the logic and what was the sense of having an increased fine provided for a second offence of possession. I can recall a few years ago it was an offence to have a drink in your backyard, and if I were doing it and if some snoop neighbour turned me in and I was fined for it, then I do not think that if it happened again the situation would be any worse. Why is that necessary in this case? Because if you do not have an increase in the fine, then there is really no necessity for keeping a record.

Mr. Robert: We did not make any specific recommendation concerning this aspect, and I must admit that I would be very embarrassed if I were to try to tell you the logic behind it. I do not know what it is. In the case of trafficking or importation there is a difference from that of simple possession, but as to the logic behind it, I must say I do not know what it is.

[Translation]

Mr. Roberge: What led us, maybe Mr. le Bâtonnier was not there, but what led us to adopt this solution was that we said: the person who is arrested once for possession can be given the benefit of the doubt, he may have used cannabis only occasionally and is not implicated in trafficking. But when a person is arrested for the second, the third, or fourth time, we have good reasons to believe that he is really implicated and that, consequently, the sentence should be appropriate. The example that you gave us earlier was related to an offence on the provincial level, the question of having a drink in his yard is a debatable question, more especially since this law existed in some provinces and did not exist in others. Finally, the evolution of people, we can agree or not on the signification of the word "evolution", but it is possible that this offence has

been created because of a certain mentality. But in the present case, we have a criminal law that can have consequences. So, if a person repeats the same thing, we want first of all to protect him from having a criminal record because of a first offence, but if he is really implicated, if he indulges in constant use, then we want the penalty to be more severe. It is like the person who drinks alcohol when driving a car. These offences are generally found in the Criminal Code. The second offence for the same kind of charge, is usually more severely punished, since the offender did not learn the first time.

[Text]

The Chairman: I think, Senator Godfrey, that under the new Oregon law there is no distinction made between a first, a second or a third offence.

Senator Prowse: Just one question, Mr. Chairman. In section 52 of the bill, and this is a section that deals with the Identification of Criminals Act, you have the section under which one is fingerprinted, mug-shot, weighted, and all the details are taken down. Would you think that it would be a good thing if that were taken out of this amendment, or do you think it should be left in?

Mr. Ménard: We thought about it. We think it should stay there for two reasons. First of all, if you have a recidivist, then this is the only way you can prove a second infraction. Secondly, we think that the provisions of the criminal records are more important than that, and to be sure that the proper criminal records be erased I think we must have records of that form of identification, so if you should decide that a criminal record should be erased after a certain period of time, without a second infraction, then I think it would be important that this section should stay.

Senator Prowse: Thank you.

Senator McIlraith: The purpose of my intervention at this stage is a very simple one. I think this is an excellent brief and its exposition has been very clear and competent, and the answers to the questions in amplification of the brief have been clear and, in my opinion, of first-rate quality. But now I would ask that we terminate this part of our proceedings and move on to the next witness. In asking that, I want, through you, to thank these witnesses for the presentation they have made.

The Chairman: Mr. Ménard wanted to make one comment on a matter which was raised this morning.

Mr. Ménard: There was one point raised this morning by Senator Laird, and that was to the effect that somebody suggested that a certain quantity should be established for the application of the section dealing with "for the purpose of trafficking". I think the point interested some senators, but I would suggest that you should not fall into that trap. I do so for two reasons. The first one is that it is impossible to define weight in the matter of cannabis. You are not going to use volume because you can compress it into a smaller volume. You cannot use weight because then you will have mention of a specific weight and you will have the problem of time, because it is a substance that changes weight; it loses weight as time passes because it is a green plant.

Then the quality can vary enormously for a number of reasons. So, really, quantity does not mean anything. As an example, I can tell you that I have defended a case myself where my clients were acquitted of a charge of possession

for the purpose of trafficking. The quantity was 235 pounds of marihuana. The judge was so convinced that they were in possession of it for their own use that he gave them a suspended sentence of three months. It was only three months. The Crown did not go to appeal on it. Why was that? Because they seized the plants in the field and when it was actually weighed at the trial it was still less again. So that it finally came out to 1½ pounds that was left for four persons and of a poor quality at that. So really weight and volume do not mean anything.

Mr. Roberge: We meet the same thing in Sherbrooke.

Mr. Ménard: Another point raised by one of the senators was an inquiry as to the right in the United States and the preponderance of proof of guilt over innocence. From our inquiries it seems that in the United States the right to reasonable doubt is constitutional, so even in cases of possession for the purposes of trafficking the accused will have the benefit of the doubt.

[Translation]

The Chairman: Honourable senators, the Bar has included in its brief a summary of its recommendations. I would like to ask a senator to move that it be published in our minutes of proceedings.

Senator Asselin: I so move, Mr. Chairman.

[See Appendix]

The Chairman: Then, in the name of the Committee, Monsieur le Bâtonnier, I sincerely thank you for the brief you have submitted, which will be very useful to us. I also thank your associates.

M. Robert: Thank you very much.

Ten minutes recess.

The sitting resumes.

The Chairman: Honourable senators, I want to welcome Mr. Jean-François Dionne, Crown attorney in Quebec City and vice-president of an interdepartmental committee on drug addiction problems.

I believe that everyone has been given a copy of the brief.

Senator Flynn: Yes.

The Chairman: Do you want to proceed?

[Text]

Mr. Jean-François Dionne, Crown Prosecutor, Department of Justice, Province of Quebec: Mr. Chairman and honourable senators, I would like to point out that I am practising in Quebec City and, unlike my colleagues from Montreal, my English is perhaps a little poor. Therefore, if I may, I shall address you in French.

[Translation]

The Quebec Department of Justice has read with interest the proposed amendments to the Food and Drugs Act and to the Narcotic Control Act; the consequences Bill S-9 may have on the Criminal Code are negligible as far as its contents are concerned, but it remains important as to its scope.

Under section 1, we all understand and admire the basis of our criminal law, coming from the British tradition

guaranteeing equality and equity. However, it seems to us that it would be more practical if the "analysts" described under section 25(3) of the Food and Drugs Act as well as those described under section 13 of the Narcotic Control Act were always appointed by the Governor in Council, even if, practically speaking, it is often the same person. But, it could happen, for instance, that a narcotic and a controlled drug or a restricted drug, found in the possession of an individual for trafficking, one examined by two different persons. This seems to be a useless duplication that can be easily improved.

Section 2 allows the accused to clear himself by proving that he did not have the intention of trafficking the "controlled drug".

There is no offence for simple possession of a "controlled drug".

However, experience has shown that some drugs described in Appendix G, such as methaqualone and phinometrazine are being illegally sold as are LSD or cannabis.

The police officers responsible for the application of the Act often arrest individuals found in possession of small quantities of these drugs. It is then very easy for these individuals to establish that this is for their personal use; very often, the traffickers make a deal and ask the purchaser to meet him somewhat later, or elsewhere, in order to take possession of this type of drug. Thus, they do not risk being arrested in possession of a great quantity of this drug.

Without assuming that we know what are the medical effects of the excessive consumption of "controlled drugs" or of restricted drugs, we believe that we find in the habitual users, of these drugs when they appear in court, an obvious deterioration of both their physical and mental faculties, compared to the habits of other drug addicts, specifically those who take cannabis.

It may then be preferable to compel the person found in possession of these drugs to provide a prescription or a legal authorization to possess this kind of drug, briefly, to force him to prove that he benefits from an exception, an exemption, a defence or a justification, just like the person who is found in possession of cannabis.

In section 3, the amendment brought to section 37(1) (b) allows policemen to specify their powers and we do not want to discuss the merits of this legislation. It remains however that there is an obvious contradiction between the French and English version of the same text. The words *reasonably suspects* cannot be translated by *soupçonne avec raison* in French. We are led to believe, in the English version, that a peace officer can search any person who he believes for some reasons to be in possession of a controlled drug. However, in the present French version, *avec raison* means that a peace officer must search a person that he definitely suspects of being in possession. The French linguistic concept attached to the expression *avec raison* would indicate, as far as the work of the officer is concerned, not *suspicion* but rather *certainitude* which does not seem to be in accordance with the intent of the Act.

However, paragraph (c) of section 37 which has not been amended, gives rise to some ambiguity.

Thus, if the simple possession of a controlled drug is not an offence, what right has a policeman to seize a minimal quantity of this drug found in a location, or on a person in that location?

In practice, the policeman can make no on the spot analysis of this substance. It is therefore very difficult for him to differentiate between this type of controlled drug and restricted drugs such as LSD or LBJ.

The terminology used in paragraph 2 of section 43 is confusing. We are of the humble opinion that it would be preferable to keep the one that is already existent.

In effect, section 43 (2) states that the prosecutor must have the possibility of presenting contrary evidence.

This implies that the counter evidence that can be adduced by the Crown does not have to be of such a nature as to entirely refute the evidence brought forth by the accused. Very often, this proof affects only the credibility of the accused or of his witnesses, or else tends to show that the evidence used by the defence, that the explanation provided, is incompatible, or impossible to sustain when confronted by the proof of the prosecution.

We feel that the burden of the proof, which in the existing Act, lies with the accused when he is found guilty of possession, is reduced because of the proposed amendment and shared between the prosecution and the defence, which would render establishing proof of the offence extremely difficult for the Crown. This amendment, according to the explanatory notes given with Bill S-19, is intended to uniformize and clarify various legislative texts, but one should avoid any different interpretation resulting from it through jurisprudence.

Regarding section 7, the Quebec Department of Justice has no fundamental objection to the incorporation in the Food and Drugs Act of offences relating to cannabis. This amendment had been proposed in the Le Dain Report and we will deal furtheron with the comparison to be made with respect to this section.

In section 47, paragraph (a), it would be advisable to add to the definition of cannabis, the word hashish, as was done for marijuana with the word cannabis in paragraph (b).

We could also define the word hashish as being the resin of cannabis, because this is the word used for the resin of cannabis. The denunciation that will then be read to an accused will thus be in no way confusing.

We want to insist that the penalties provided in section 48 to 51, for this type of offence, seem to us not only in accordance with present reality but to be adequate. In fact, on the one hand, they leave some discretion to the Crown as far as the prosecution is concerned, while confirming, on the other hand, a certain discretion of the courts with respect to imposing penalties, specifically in reference to section 50.

However, the procedure applicable to section 53(2) leaves us perplexed, and the same comment made concerning section 5 also applies here.

In section 55, paragraph (3) it might be necessary to specify what is meant by "reasonable notice". At present, jurisprudence considers that this is a minimum delay of seven days, as defined in the Canada Evidence Act.

A practical problem often arises. It is often difficult to give this kind of notice when the accused, who has been released on probation, has no fixed address. It therefore follows that the requests for adjournment are made by the Crown, because it is impossible to give a reasonable notice before the date of the trial. This is due mostly to the fact that, when an individual is called before the court through

a summation or an indictment, he then changes addresses, and it is then impossible to give reasonable notice to the individual.

The same remarks that we made under section 5 are applicable here. In any case, this amendment would not be the source of any inequity, because the courts have always been very broadminded before the explanation provided by the accused.

In section 12, the terminology used in French and in English is not consistent; we refer you to section 3 on the same matter.

In section 14, concerning sections 15 and 19, we should ask ourselves about the necessity of incorporating these sections to the Act, and if the intention of the legislator is to delay implementation indefinitely.

To avoid procedural abuse, if that is the reason for the delay in implementing these sections, we might perhaps consider having their application come under the authorization of the Minister, as happens in the case of certain offences under the Criminal Code.

In section 15, we should congratulate the federal legislator for his foresight in amending section 178.1 of the Criminal Code. If the will of the Canadian people is to eliminate the influence of organized crime on this kind of operation, as well as eliminating an important source of illegal income for certain individuals, it appears reasonable and logical to us that this amendment to the Criminal Code be inserted there.

We even hope that this last amendment will lead to the inclusion of other crimes that could also be shown on the list mentioned under section 178.1.

Here is an example: escape, that is not shown there.

It is in this spirit of co-operation that the Department of Justice of Quebec wants to compliment the Honourable Members of the Senate for having allowed it to present its point of view on amendments to Bill S-19.

These amendments to various Acts will necessarily be applicable before the Quebec courts, and we do believe that the Department of Justice of Quebec has always had as its ultimate goal a sound administration of justice.

This invitation was sent within the framework of a positive exchange and quite naturally goes hand in hand with the responsibility the Department of Justice must exercise with respect to the administration of justice.

The Chairman: Senator Asselin.

Senator Asselin: I would like to congratulate the representative of the Department of Justice of Quebec, Mr. Dionne. At the beginning, the Chairman presented you as a Crown prosecutor.

Mr. Dionne: Yes.

Senator Asselin: How long?

Mr. Dionne: For seven years.

Senator Asselin: You have also been introduced as the Vice-President of the inter-departmental committee on drug addiction. What are your functions?

Mr. Dionne: This is a committee formed by the Cabinet of the Quebec government, grouping three main Departments, that is Justice, Social Affairs and Education. They deal with drug addiction in the fields of activity and

jurisdiction of the provincial government, for example, the phenomenon of drug addiction, of road traffic security, the phenomenon of drugs in schools. It also gives advice to the government on the Quebec position regarding the Le Dain Report and so on. We have 25 or 26 ongoing studies at the present time. This committee is chaired by Dr. André Boudrault. I think he is quite well known. He is the general director of the *Office de prévention de la toxicomanie et des autres drogues*.

Senator Asselin: Now, as a Crown prosecutor for seven years, do you feel that the number of people who are using cannabis and hashish, since this is what we are going to deal with, have increased, and have the penalties for the offences of simple possession also increased?

Mr. Dionne: In my view, I would say that, over the past few years, on the basis of the experience mainly of my colleagues acting as federal prosecutors before the courts of the province, and more specifically in Quebec, offences have increased. However, Glenville Williams said in *Outlines of the Criminal Law* that the law of a people is governed by a series of moral principles, that the judges themselves take on these principles and, we should add, whether right or wrong, that the penalties incurred have diminished.

Senator Asselin: Now, the members of the Bar have told us of the possible elimination of criminal records for persons arrested for simple possession; could you elaborate on this matter?

Mr. Dionne: I notice this because I have closely listened to Mr. Menard who was here a while ago. He referred simply to one kind, not to the fact of the amended section, in this sense that we feel there should remain principles stipulated in Bill S-9 concerning repetition of an offence, and that the only logical and legal way to prove repetition is necessarily by having the legislation identify criminals and establish a criminal record. As to the consequences of the complete elimination of a criminal record for someone who has not repeated an offence, this brief does not deal with this matter. However, we would be tempted to say that time heals everything and if we are in the presence of a first offender, a very young one, I think that this would be an acceptable solution.

Senator Asselin: One last question, Mr. Chairman. In the bill that we have before us, the Crown prosecutor is allowed to use two means of action; summary conviction or indictment. Not only the Bar but other witnesses who appeared before the Committee objected to this and wanted to limit the prerogatives of the Crown on the choice of the action. Do you have comments on this?

Mr. Dionne: My comments are twofold, Senator Asselin. The Criminal Code, when other crimes are concerned, because it is a crime, provides several ways, that is that some acts are punishable by summary conviction or under criminal procedure. Personally, I do not see how this procedure could be changed, either removed from Bill S-19 or from the Food and Drugs Act, because there is always a choice by the Crown of making a *prima facie* distinction, when it makes the quasi judiciary action of making a complaint, if this individual, according to police records, has commercial intentions or, if it is a simple delinquent who does not have the intention, or who has done so, but not to sell, but only personally, or among friends, or among delinquents. From this point of view, I think that the criminal legislation is explicit for other crimes. Therefore,

I do not see why it should not be for these amendments and for the Food and Drugs Act.

On the other hand, take the case where you are prosecuting someone for a criminal act and the prosecutor should have, in one specific case, prosecuted on summary conviction; as long as there will be an effect with respect to the Canada Evidence Act, by a criminal act, it cannot be eliminated, at least not as quickly as that. However, rarely will the court not take into consideration the facts of the case in rendering its judgment at that time, that is to say that, if the individual has been accused of a criminal offence, the court will consider at the time and, perhaps, appropriately, that the individual should be sentenced on summary conviction. Moreover, in most cases that have been brought to my personal attention, the court on delivering judgement asks the Crown attorneys why they have instituted criminal proceedings in the particular case? I must now tell you that, in all the cases I have personally attended, the reasons were always justified. This is so true that, when the sentence is handed down, the Crown attorney often when a criminal offence has been committed, explains why the sentence is sometimes more severe in the case of a criminal offence by saying: "We have instituted proceedings for a criminal offence for the following reasons." Well, that is the way things are done. I think that, what often happens, under the provisions regarding the burden of proof in Canada and of the Criminal Code, is that when somebody has been accused for example, of possession for trafficking, or of simple possession, the plea to the court will be of simple possession; the counsel for the defence will plead the case on this offence. Moreover, where applicable under present legislation, counsel for the defence will put forward the provisions contained in section 534.6, part 24, and say to the Crown: "Our plea to the Crown will be on simple possession." However, even if part 24 was initially put forward in the case of a criminal offence, and even if the judge may use his discretion, the courts will accept that in all cases, provided the Crown agrees to.

Senator Asselin: Thank you, sir.

Mr. Dionne: I would like, if you agree Mr. Chairman, before the next question, to make some comments as representative of the Committee on drug addiction. The honourable Senators may share my concerns on that particular point. I wonder if possession of cannabis should remain in the legislation and, especially, in part 5. One of the reasons explaining the attitude has been the fact that possession for trafficking, or trafficking of controlled use or restricted use drugs, entailed lighter penalties than those handed down for cannabis, and, considering the relative seriousness of the two systems, it would be appropriate and logical that honourable senators make the necessary amendments, or at least to know what is our opinion, our views on the subject. After discussions with the members of the interdepartmental committee on drug addiction, with the experts in the field, and with Dr. Boudreau, Chairman of this committee, we can testify every day to the bad or dangerous effects both physical and mental, of restricted use drugs, but also, in another respect, of the controlled use drugs, LSD and STP in particular for restricted use drugs, and, for mandrax too. I think that it is under controlled drugs. However, we believe, legitimately, that this trafficking should be more severely punished, because of its irreversibly detrimental effects on the youth of our country. We submit that it is no use to consider the controlled drugs, possession of cannabis, as restricted use

drugs. In terms of penalties, and that the penalties should be more severe, given the irreversible prejudice that can be caused by an excessive use of those drugs.

The Chairman: Senator Laird?

Senator Laird: This afternoon we have heard the brief of the Bar of Quebec, where they state at page 8:

Moreover, the Bar considers that this record should be automatically destroyed after a certain period of time without relapse.

However, this morning, some colleagues from Ontario, another beautiful province, have suggested a penalty of one year. What do you think of their proposal?

Mr. Dionne: Well—I would like to answer you by another question, Senator. Do you think that policemen can follow a person and that it is a reasonable and adequate delay to try to prove a relapse before the courts, because it will be possible to prove a relapse when the person is convicted. You certainly know, since you represent here all the provinces, that the administration of justice, even if it is somewhat flexible, remains nevertheless rather slow. Moreover, do you think that it is possible after one year—I do not think so, because I think that this period is obviously too short, because, even when an individual is called three months after his conviction, it remains impossible, especially if he has a clever counsel who will obtain delays, to convict him a second time during the same year. At that time, it will be impossible to prove the relapse, unless the law provides to the contrary. However, we believe that it remains a period of "probation",—here, I quote the term "probation" because I do not use it as it is defined in the Criminal Code,—and that this period of "probation" is definitely too short.

Senator Laird: Another question has been raised by them concerning the delays that are caused by the analysis of drugs in the province of Ontario. What is the situation in your beautiful province?

Mr. Dionne: I have already told you, a moment ago, that I was not the federal attorney on drugs. However, I was told,—the evidence, unfortunately, is only be based on a rumour,—that the delay for obtaining the results of the analysis of a drug, would be of about one month, three weeks perhaps in the province of Quebec. I have pleaded, with my federal colleague, a case before the courts concerning possession of articles, of burglar tools, and of hot articles also, and we have pleaded within 10 days following the hearing. In a specific case, he had received an analysis from Longueuil,—I know that the office is in Longueuil,—and he had received the results from that office. I would not know for the district of Montreal. I would be unable to say whether it is a general policy, but, in our beautiful province, as you call it, as we also call it, it appears that a delay of three weeks would be foreseeable when an individual appears before a court.

Anyway, in those particular cases, I must tell you that those amendments must always be considered in the day to day practice, and I know, given the questions asked by the honourable senators this morning, that they always take into consideration the practice. How should we assess that in the practice? Will Canadians be able to understand that also? We can say that most of those individuals, who are convinced of possession for trafficking, unless they have an enormous criminal record, do not stay in jail, under the provisions of the new legislation, edicted in 1973, concern-

ing bail. Then, the case would be very serious. I think that, in those very serious cases, it is necessary to take a certain period of time, not an excessive period of time, but a certain period of time in order to get a complete analysis.

Incidentally, in our brief, we stress this specific aspect, we say that the analysts, who most of the time are chemists appointed under the Foods and Drugs Act or the Narcotic Control Act, that all of them should be appointed by the Governor general, but that they should not necessarily be employees of the Department of Health, or appointed for that specific purpose under the provision of the old legislation, because, as psychiatrists nowadays, and as chemists certainly, those individuals are not biased. They are available for scientific reasons only, as experts, to analyze a substance. They do not have to take a stand. Necessarily, since the Crown has the onus of the proof, it is always the Crown who asks for an analysis, that is most of the time; the defence very seldom asks for an analysis, but it happened a few times. Does this answer your question?

Senator Robichaud: Yes.

Mr. Dionne: On the other hand, there may be a point that I would like to specify.

A question has been asked to the lawyers representing the Quebec Bar Association concerning the transfer of simple possession of cannabis under the Food and Drugs Act.

Our attitude in this matter is that we consider this to be first of all presumptuous because it has not yet been proven, and I think that this is the way to consider the problem, that these narcotics are not dangerous.

On the other hand, on the non-possession of narcotics, do not talk of narcotics, but of possession of cannabis, we must understand that in fact, this person did not get it, he either cultivated it or bought it; and this cannot always be proven in court, but there are people, other than this individual, who have done it, among friends, or passing it at friendly meeting. We must however consider that some people make a living from such a traffic, as it is the case for importation; this is to emphasize that the importation of cannabis was very strict. The old law may have been strict. We want to congratulate the perspicacity of the people who prepared Bill S-19; because of the method of prosecution, the Crown will be able to establish, at their discretion, whether they are dealing with a first offender, or an individual involved in international smuggling. And I think that this is a notion.

So, I see the merits of prosecution for criminal act, and prosecution by summary conviction.

On the other hand, I appreciate subsection i), and on the other hand, I repeat in order not to penalize, even if we have a proof in commercial matter to the effect that it is an individual who has had marijuana carried once for his users, and another time, he had other substances carried for his users, that the young person who carried these products for other people or for himself, be not penalized if he has adequate proof. I believe that the law provides an important safety valve. We submit that we would not want to see it removed from the law, because it leaves a certain discretionary power to the Crown and to the Court who could judge each case according to its merits.

Senator Flynn: Mr. Chairman, I would like to make a few comments on the reasoning that has been presented to

us by our witness. I think that it is clear, from the evidence that has been brought before the committee up to this date, that the opinion that one has on the question of the kind of legislation which should regulate the use and traffic of cannabis, depends on one's belief regarding the danger derived from the use of cannabis. Our witness who is a member of a drug addiction committee in Quebec seems to be assuming that cannabis is very dangerous. This seems to be the opinion that he has expressed and the opinion of his committee.

Mr. Dionne: May I answer?

Senator Flynn: Yes, please.

Mr. Dionne: I would not say that marihuana is very dangerous, but the historic and legal tradition in Canadian governments has been to consider it first of all as a narcotic.

It is important to emphasize that Bill S-19, in order not to cast a serious social stigma on those who have used this kind of narcotic or indulged in trafficking, does not provide any such stigma. In fact, the penalties have been reduced and some new modalities have been provided. But I think that it would be wrong to pretend that there is no danger, to say that the law should not take into consideration the strict possession of cannabis because, if the legislator, for a reason different from the one that I have just stated, would delete from the Criminal Code and from this special act, the strict possession of cannabis, the Canadian people would understandably jump to the conclusion that cannabis has been legalized.

Senator Flynn: I do not understand at the moment, it is not so.

Mr. Dionne: I think that at the moment—

Senator Flynn: According to our bill, is this not the interpretation that will be given? Anyway I assume that if you do not think that it is dangerous, then at least the possibility of danger requires a legislation, even the mere possibility of danger.

Mr. Dionne: Yes. I was very interested by the comments made before you, one or two weeks ago, by a doctor who had studied cannabis and whose reports, from what I have read, showed a certain harmfulness.

Senator Langlois: Dr. Malcolm.

Mr. Dionne: I think you are right, Senator Langlois, it could be Dr. Malcolm. Then we must realize, apparently, and I say apparently, because we are not scientific experts, that the people who are judged in court, or by probation services, or the people that can be observed by RCMP officers, Quebec Police officers or Municipal Police officers,—that those who smoke marihuana do not show the same signs or troubles as the people who have indulged in excessive use of hard drugs. I think that it is in this way that the law should be wisely understood, considering the natural implications. It is this criterion of appreciation that the legislator must use; it is a natural criterion, we have to look at the appearance and behaviour of an individual to see if he is not highly disturbed. Then, the penalty must be adapted.

I think that this is how we have understood the amendments to Bill S-19.

Senator Flynn: Do you support the bill because of the experience that we have had during the last few years on

the effects of cannabis, or is it only because you consider the social problem related to the penalty, and maybe the social stigma for the person who has been found guilty of simple possession?

Mr. Dionne: If I may answer with a practical example, the person who imported five grams of marijuana got an automatic seven years prison term. Personally, I think that this is absolutely excessive. I always thought it was excessive.

Senator Flynn: It was not automatic, but possible.

Mr. Dionne: If the person were found guilty of importing narcotics, personally, I think that this is excessive, considering the social consequences for the life of the individual. The legislators consider that on sentences, in view of the social consequences. Does that prevent people from behaving normally in a society? I think that we had to stop at a certain point, and this is why we consider that possession of cannabis must stay, but that "simple possession" must be completely removed from the Code. On the other hand however, we consider that the harmlessness has not been proven, and that the more recent scientific studies seem to indicate that there is a certain harmfulness. So we say—

Senator Flynn: It would be different if the harmfulness was proven.

Mr. Dionne: That is different, and I leave that to the scientists.

[Text]

Senator Godfrey: We had evidence from the Mounted Police and others on this question of importation, that in fact when someone came in with a very small quantity of marihuana, they were never charged with importation but with being in possession. You say that only five grams will get them seven years. So in certain cases it does not work. Why do you prefer to give the power to the crown prosecutor to decide whether someone who imports some marihuana should go to prison for a minimum of three years, rather than leave it too the judge—which is what this bill provides, by providing for a minimum of three years and giving the crown prosecutor the decision whether to proceed under indictment? Why are you so enamoured of the crown prosecutor's judgment over that of the judge, when you have just told us about a case where he went ahead and put someone in jail for seven years for having five grams?

[Translation]

Mr. Dionne: I aimed at giving an indirect example, but it is an example which could happen. I know very well that if somebody came in with 5 grams of marihuana, the Crown prosecutor would charge him with intent of traffic and would not accuse him of importation. I only wanted to illustrate by means of an example, maybe it was a bit ridiculous, maybe a little too absolute, of the reality which is quite different.

[Text]

Senator Godfrey: You are not quoting an actual case?

Mr. Dionne: No.

Senator Godfrey: I am sorry. I misunderstood you.

[Translation]

Senator Langlois: Mr. Dionne, in asking his question,

senator Godfrey established a premise which he seemed to accept, to the effect that the decision should be given to the Crown prosecutor rather than to the judge. Do you accept this notion?

Mr. Dionne: What happened in practice, is that in some cases, when it was a very small quantity of narcotics, be it cannabis, because cannabis is a narcotic, there was no charge for importation but a charge for possession with intent of trafficking, this is the premise I accept because I have seen it and because it has been checked out on some occasions by the Quebec courts. Such a charge was not made, precisely to prevent a Crown prosecutor from exceeding the law, I don't know exactly. However, it was to prevent that such a person receive a minimum sentence of seven years. I know that this has happened.

Senator Langlois: You do not recognize that the judge is limited by the procedure chosen by the Crown prosecutor?

Mr. Dionne: If the Crown proceeds by indictment, the court will be forced to follow this decision, they will not be able to use their discretion and proceed on summary conviction. I must accept this premise because when the Crown decides in favor of indictment or of summary conviction, it is an act which can be judicially verified. But the court does not have the power to change from what we call section 16 of the Criminal Code to section 24.

Senator Langlois: Did we not get proof this afternoon, that the judge could ask the Crown prosecutor to justify his choice of procedure?

Mr. Dionne: In practice, it happens when the sentence is pronounced, let us assume that the person is found guilty of a mixed offence and that the Crown chooses to proceed according to part 16, i.e. by indictment, the judge will say: you have chosen to proceed according to part 16 or part 24, either by summary conviction or by indictment, and he always ask: this is a quasi judicial act that you made by invoking part 16, why did you do it? You can be sure he will ask that. In any event, according to my experience in the courts of my province, it is a very normal procedure; it happens every day. Most of the time, we choose indictment when we are convinced. We all know that the law cannot reach into people's heart, and some Crown prosecutors will be too earnest. However, I know that Crown prosecutors choose this way particularly when the person has a rather heavy criminal record, or when they have evidence of completely illicit activities, and in the case of serious narcotics of drugs traffickers. I know that in these cases, indictment will be chosen.

Senator Langlois: In the article I tabled before, I think there was a certain agreement, as my colleague was saying. Now, I think the question has been answered, Mr. Chairman.

The Chairman: Are there any other questions?

[Text]

Then, on behalf of the committee, Mr. Dionne, I thank you for your brief and the answers you have given us.

The committee stands adjourned until 2.30 tomorrow afternoon when, with the consent of the Senate, we shall meet and hear Dr. McGeer, from Vancouver, and Mr. Richard Anthony of Alberta.

The committee adjourned.

APPENDIX

RECOMMENDATIONS OF THE BAR OF QUEBEC

In the case of possession for trafficking, if possession is evidenced, it would be sufficient for the accused to raise a reasonable doubt as to his intent of trafficking;

- that the words “give” and “offer” be excluded from the definition of “traffick” in cannabis;
- that the importation of cannabis should not be treated more severely than for more dangerous drugs;
- that provisions similar to those of the Criminal Record Act be included with respect to simple possession so that criminal records be maintained separately, and be available only to establish repetition, and that they be

automatically destroyed after a certain period of time if there is no repetition of the offence;

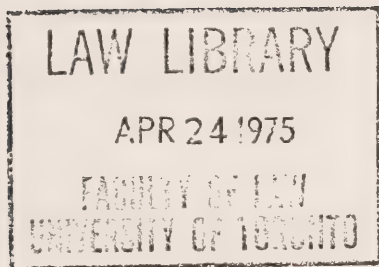
- that the minimum of three years provided for in proposed section 50(2)(b) of the Food and Drug Act be eliminated and, if so, that the excessive discretion as to the mode of prosecution be limited;

and finally:

- that simple possession of cannabis should not be punished more severely than that of much more dangerous drugs and that classification and sanctions for drugs be consistent and take into account their relative noxiousness.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 12

WEDNESDAY, MARCH 5, 1975

Seventh Proceedings on Bill S-19, intituled:

“An Act to amend the Food and Drugs Act,
the Narcotic Control Act and the Criminal Code”

(Witnesses and Appendix: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Senator Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Extract from the Minutes of the Proceedings of the Senate, March 4, 1975:

With leave of the Senate,

The Honourable Senator Macdonald moved, seconded by the Honourable Senator Grosart:

That the name of the Honourable Senator Choquette be substituted for that of the Honourable Senator Sullivan on the list of Senators serving on the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, March 5, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:40 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Buckwold, Choquette, Croll, Fergusson, Flynn, Godfrey, Laird, Langlois, McGrand, McIlraith, Neiman, Prowse, Quart and Robichaud. (16)

Present but not of the Committee: The Honourable Senators Argue, Cameron, Eudes, Lafond, MacDonald, McNamara, Molgat, Norrie and van Roggen. (9)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee continued its examination of Bill S-19 intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

The following witnesses were heard by the Committee:

Dr. Carleton Turner, Director of Research,
Department of Pharmacology,
University of Mississippi;

Dr. Patrick L. McGeer, M.D.,
Faculty of Medicine,
University of British Columbia;

Mr. Richard M. Anthony, Chairman,
Alberta Alcoholism and Drug Abuse Commission,
Edmonton, Alberta.

On Motion of the Honourable Senator McIlraith it was *Resolved* to include the brief submitted by Mr. Anthony in this day's proceedings. The brief, entitled "Submission to the Standing Senate Committee on Legal and Constitutional Affairs" is printed as an Appendix.

At 5:35 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Wednesday, March 5, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 2.30 p.m. to give further consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: The committee has three witnesses this afternoon, each of whom has come some distance, and we must terminate the proceedings this afternoon. I will endeavour to allot 50 minutes to one hour to each witness, including questions.

The first witness is Dr. Carleton Turner, Associate Director of Research in Pharmaceutical Sciences at the University of Mississippi School of Pharmacy. I will now call on Dr. Turner and ask him to present his views, which will relate to scientific aspects of marihuana. He will endeavour to answer some of the questions arising from his presentation. Dr. Turner has to leave by plane for Washington before the end of the afternoon and I hope honourable senators will govern themselves accordingly.

Senator Godfrey: Mr. Chairman, just before Dr. Turner proceeds, I will be very brief in pointing out that I was reported in the *Globe and Mail* this morning as objecting to television crewmen whispering. I do not intend to complain of the inaccuracy of the report, but I was actually objecting to loud talk which was distracting the witnesses. I wish to encourage the television personnel to whisper rather than talk.

Senator Croll: Mr. Chairman, did I understand you to say that Dr. Turner comes from Mississippi?

The Chairman: Yes.

Senator Croll: Well, how does he get up here?

The Chairman: I believe he came by plane.

Senator Croll: I realize he came by plane, but for what purpose? Is he an expert, or what brings him here?

The Chairman: Senator Croll, normally I ask the witness to give his qualifications and, if you give me the opportunity to proceed, I intend to do so now.

Senator Croll: I should have thought we would have had it ahead of time, to find out who and what he is.

The Chairman: Every witness called here is called by reason of his qualifications and I think you know that by now.

Would you give your qualifications, Dr. Turner?

Dr. Carleton Turner, Associate Director of Research, School of Pharmacy, University of Mississippi: Honourable

senators, ladies and gentlemen, I am Carleton E. Turner; I have a Ph.D. I am presently the Associate Director of the Research Institute of Pharmaceutical Sciences in the School of Pharmacy in the University of Mississippi. I am also director of the National Institute on Mental Health's Marihuana Projects. That has been changed recently to the National Institute on Drug Abuse. I did a post-doctoral in pharmacognosy, which is medicinal properties of natural products at the marihuana project at Old Miss from 1970 to 1971. In 1971 I assumed the directorship of the project. In 1972 I assumed the position of associate director of the Research Institute.

Our laboratory has published over 50 papers on the plant material cannabis and some of its interconnections, and that is what I am going to talk to you about today.

Now, if at all possible I would prefer to talk from the slides, if you will give me that privilege, because sometimes a slide presentation will give you much more detail than I can explain. Also, since we have a time limit and Southerners are noted for their slow manner of speech, I would prefer to get along with the presentation. May I have the lights and the controls of the projector?

Senator Croll: Mr. Chairman, is there a brief?

The Chairman: There is one page of notes, which I believe has been distributed.

Senator Croll: It is like shorthand, though. Is that all there is?

The Chairman: That is all there is.

Dr. Turner: Senator, I apologize for not having a total brief, but under the circumstances my wife is threatening to divorce me if I do not come home and I just did not have an opportunity. If the honourable senators wish, I will provide a detailed description of the presentation today, but at a later date, senator.

Today I would like to share with you some of the aspects of the plant. The plant is called *Cannabis sativa*. There is a current debate over whether it is a genus species of *Cannabis sativa* or an genus species of *Cannabis ruderalis* or *Cannabis indica*. However, even in its small state, as you notice in this slide, with some leaves which are smooth, the other leaves of the cannabis plant contain an active principle, and I use this word "active" in Delta-9 THC.

Now, as a plant grows it takes on a different profile, but please bear in mind that at any stage of growth of this plant the active principle is present and can be detected. The point that I would like to get across in this presentation is a variation of the word marihuana, which is not an all-encompassing word. It means many different things; it is not a single entity within itself. This is the plant that most people think of when the word marihuana comes to hand. That happens to be a Vietnamese plant, and I will

show you the difference in these plants. Bear in mind when you see a different plant that that plant is going to have a different chemical composition. There will be different ratios of the cannabinoids in that plant. Cannabinoids are a class of compound indigenous to the plant cannabis. They are not found anywhere else in nature and they vary tremendously. Please take into consideration that as the chemical composition varies, the pharmacological responses will also vary.

This is a male plant; there are two houses, so to speak, of the marihuana plant, the male and female. In the old literature it was believed that only the female should be the plant controlled for its hallucinogenic or psychomimetic properties. That is not the case; the male plant contains just as much of the active principle as does the female plant. The male plant contains the flowers; the female plant contains the seed. The male plant is at the left of the screen, with the flowers; the female plant is at the right, which is very difficult to ascertain from the positions in which you now are. If we start looking at how this plant in located geographically and take into consideration that our job at the University of Mississippi is to provide the National Institute of Drug Abuse with as much knowledge about the plant, its chemical composition and, therefore, its potency, as possible, we had to go all over the world to collect samples. We have grown samples in Mississippi from 1968 to the present. We have grown samples from Russia and from South Africa. This sample happens to be from Iran and is a very unique cannabis plant, in that most people would not recognize it as such. You could grow this in your backyard and the local police could come by and not know what you were growing. That is one variant of plant, with one chemical entity and one pharmacological response, which will be different from other plants. This one happens to be from Czechoslovakia, the one that we use as a basic fibre plant. We refer to them as two types: a drug type and a fibre type. The drug type is the one that has a high percentage of the active principle, THC; a fibre type has a low percentage. However, if you let these plants grow wild the drug type will predominate.

This is also a cannabis plant, a Turkish variety, which is of a drug type in certain situations and of a fibre type in others. It is a variable plant, which will not keep a continuity of chemical composition over a period of time.

Here is also a cannabis plant, which looks very similar to the maple leaf. The thing I want to get across to you is that this plant is not stable. We took seeds and grew this plant in the hands of our botanist, who is employed full time on the staff and the seeds that produced this plant also produced these plants. So it is a very variable composition when it comes to the consistency of the plant material.

Now, if we look at this plant and we think about the definition of what we refer to in the United States as marihuana, or the single convention with the flowering tops, I would like to share with you this: A particular cannabis plant. It is still a male plant and it has flowers all up and down the plant. So if we talk about the flowering top, this has a tendency to confuse most people, including myself.

You will see that the flowers exist all the way from the bottom to the top of the plant. So when we talk about the flowering tops of plant, one plant may have flowers going all the way from the bottom to the top and another may have a smaller amount of flowers, but it will contain flowers and there is no one part of that plant you are looking at now that does not contain the active principle.

That includes the stems, stalks and whatever. This is of a female plant; the thing in the middle is normally referred to as a seed. However, actually it is a fruit. The point I wish to get across here is the covering of this seed is called a bract. On the street a good grade marihuana will be about one per cent THC by dry weight. If you take that bract from around that seed and analyze it you will get approximately 10 to 12 per cent by dry weight. So the bracts contain a tremendous amount of the active principle as well as the other cannabinoids. However, the female plant does contain the fruit and contains very potent amounts of THC in the bracts.

This is a small Indian plant, which has a different chemical profile than any plant you have seen previously. Once again the point is, as these plants vary in their morphological characteristics, they vary in their chemical characteristics and the pharmacological responses. The Mexican material is our drug plant that we use as a standard grade marihuana. I should clarify a particular variant which is grown, or was grown, in the State of Guerrero outside Acapulco. There are approximately 13 different variants of marihuana growing in Mexico, so when one says, "I am using Mexican marihuana in my experiment," that person has to be precise. I think some of the problems involved here with the plant material is that a researcher in Brazil—for example, Dr. Carlini—says that Brazilian marihuana causes aggression in animals. We then take a man in the U.S.—I will not use a name, because you will probably shoot me—and he says, "Carlini doesn't know what he's talking about. Marihuana does this." Then you take a Canadian researcher and he says, "You two guys are wrong. It does this." Then a person in Britain says, "Well, you three guys are idiots. Everyone knows that marihuana will or will not do this." The sad state of the fact is that probably all four are correct, but they are all four using different plant material, having a different composition of cannabinoids, and therefore their results will be different.

The scientific community says, "It's just as confusing to us as it is to the lay person." I said before that we have a male and female family in the plants. Perhaps I should not mention this, but being a Southerner they say I do have a little bit more freedom to make a joke occasionally. We have a few of those plants that cannot make up their cotton-picking minds whether they want to be male or female. This is what we call a monoecious plant which has male characteristics and female characteristics. Here is another variable thrown in when you are talking about marihuana.

To give you some idea of the plants' height, plants will grow anywhere from four or five feet, to perhaps 20 to 25 feet tall. This gives you an example of our plantation. I am sorry, we do not have the banjo pickers out there and the mint juleps to show you in the slide, but these plants have been harvested and the fence is 12½ feet tall, so it gives you some idea of the height of these plants.

People say, "My son is growing this little weird plant out back, and I know it can't be marihuana because it is about 10 feet tall." The said state is that it is probably marihuana. If we go a little further with this crazy plant called marihuana and start looking at what we know about the plant, where its active principles are located, we have on the right a multicellular gland and on the left a unicellular gland. The one on the left has one cell and contains no active principle. The one on the right has many cells and contains the active principle. People say, "Well, the leaves

do not contain THC, or the stems or stalks do not contain THC." This is a cross-section of a leaf of marihuana, Mexican variant, and you can see from magnification that the dark red colour is a dye showing the presence of cannabinoids. You will notice that the unicellular hairs are clear with no cannabinoids, and the multicellular hairs contain the cannabinoids. Any time you see the multicellular hairs, you find the cannabinoids. One way of identifying marihuana is by these particular hairs. If we look at a cross-section of a small stem, we find the same thing—the THC content is there. When we talk about marihuana in preparation in the South or in the States, we are talking about herbal preparation and about a THC content which may vary. The THC content may vary from 0.1 per cent by dry weight up to 4 or 5 per cent by dry weight.

What other ways can we identify what we are talking about? The problem associated with marihuana is that the analytical people have to give pharmacologists a detailed chemical profile. A mistake which has been made in the past—and I am sure we will have people disagreeing with me about this—is where we have said we are going to use synthetic marihuana. Synthetic marihuana is just THC, about 96 per cent pure. What THC will do to an animal or to a human being is not exactly what marihuana will do, because there are different chemicals in plants. So we have to basically identify the plant material so far as its chemical composition is concerned, and give it to the pharmacologist, psychiatrist or sociologist where they know what they are dealing with.

There are three basic methods. One is looking at it under a microscope, as you just saw, with unicellular and multicellular hairs, or a thin layer of chromatography which designates certain zones. At the top of the plate is a cannabinoid called cannabichromene. In fact there are roughly 50 different cannabinoids. So we are getting into a total complex system when we start talking about plant material and comparing it with synthetic material. Thin layer chromatography is another way to identify it.

The next way to identify it is by what we call a gas chromatograph. Do not try to think of these things as being anything except a polaroid profile of the chemical entities of a plant called cannabis. The one on the left is Afghanistan female; the one on the right is Afghanistan male. If you look at the one on the right, we have a peak that is fairly tall, that has a CBD and a CBC by it. Then to the left of that we have a peak which has a delta nine, which is the active principle. Please look at the difference between an Afghanistan variant, between the male and the female. The point is, this is only valid on one sample. It is not valid for the whole plant. It is not valid for the preparation that you would make from that plant.

Another example would be the South African, which is the left, and the Thailand, which is the right. The important thing is to get this perspective in mind, that we are talking about two entirely different substances. The pharmacologist using the stuff on the left called South African will get one response. If he uses the one on the right called Thailand, he will get another. In double blind experiments in the States, we found that naive smokers cannot tolerate anything over 2 per cent by dry weight. That is 2 per cent THC by dry weight. But all of a sudden, with monkeys, we found that 1.87 per cent material, which is supposed to be very potent, did not give the monkeys a high. So we must be getting some interaction between the other cannabinoids. A lot of work has been done with this plant material, in Brazil, where the responsibility of certain

cannabinoids potentiating the effect of delta nine, or increasing it, and certainly antagonizing it.

So this gives you the point that you cannot take marihuana plant material and extrapolate to synthetic marihuana. A Mexican sample, which contains one per cent THC, which is from the state of Vera Cruz, will be different from the Mexican sample from the state of Guerrero and it will be different from a Mexican sample from Pueblo. This particular sample is only indicative of a particular sample. What this means, if we go on the street and buy 15 different samples of marihuana, we are probably going to get 15 different drugs. We are not going to get one particular crude drug, but 15 different drugs. In fact, we had a gentleman from Chicago call us not too long ago and say, "Please help me out. I had this experiment that has been in progress for a considerable amount of time. The results were real good. I went back to the guy I have been buying it from, and now I can't duplicate any of my results." That is fairly easily understood, when you get down to the basics. He probably had a drug plant the first time and perhaps he had a fibre plant the second time. So it is a very difficult thing to extrapolate from one study to another.

We have a tendency in scientific research to get a parameter by which we can hold on. With marihuana that is Delta-9. This is very briefly a table of the country of origin, of marihuana from Nepal, Mexico, Pakistan and U.S.A. All of these samples are found on the streets in the U.S. If you look at the THC content, it is 2.81 for Nepal, 1.68 for Mexico, 1.3 for Pakistan and 0.35 for the home-grown U.S. stuff. What happens in our scientific community is, each person tries to be an expert in an area, so they will say "Well, it's fairly easy to see that the Nepalese marihuana is strong than the Mexican marihuana or the Pakistan marihuana." The sad state is that most people will agree with that. But this is only good for that particular sample taken on that particular day; it is not good for a sample taken three days later. If we look at this growth profile, or cannabinoid profile, just on THC alone, and we look at the left, which is our dry weight—in other words it has 2.6 per cent; that means 2.6 per cent by dry weight is THC—and on the right, at the bottom, is five, six, seven, eight. Those are weeks. People say, "The material before it is male or female and cannot be potent." It takes 11 to 12 weeks to find the material developing into its male or female characteristics. Here you have 2.6 per cent THC at week 10, which is a very potent preparation. If you were to harvest it at week five it would be very low THC content, less than 0.6 per cent. If you were to harvest it at week 11 it would be around 1.3, 1.4 per cent. So, it varies.

If you compare that with what the male plant looks like, you will see a difference. The one before was young, no sex differentiation. This one is male.

We did not do the monocious because those are weird—they can pop up one week and die off the next—so we had to stick with male and female. These are Mexican variations. We get potent material at week 15 of about 5.6 per cent.

People say that marihuana is not as strong as hashish. Hashish may have a THC content anywhere from 0.5 per cent to 7 or 8 per cent, but if you take the average hashish, being around 4 to 5 per cent THC, you can get a preparation from the marihuana plant at week 15 or 16 which would rival any hashish you have seen. I am not talking about liquid hash; I am talking about the herbal preparation of hash from the resin plant.

So the marihuana preparation is very potent. The South Africans have three types of marihuana, or what they call marihuana. They call it Dacca. They have Dacca grade 1, which is about 6 per cent THC; Dacca grade 2, which is about 3 per cent; and Dacca grade 3, which is about equivalent to our marihuana, roughly in the neighbourhood of 1 per cent. So we have to be particular when we are talking about the research on marihuana.

If you look at the male and female—the male is the broken line and the female the solid line—you will find that the male plant—and this is THC content by dry weight—will have THC content probably higher than the female plant somewhere in its growth path.

So this substance we call marihuana is one of the most unique things you will ever see. This growth profile is only good for that particular Mexican variation. You may get marihuana with THC content from 1 per cent to 7 or 8 per cent; you may get one down to 2 per cent, maybe one down to 1 per cent.

This is the reason why we in the scientific community are trying very, very hard to standardize our method of preparation—to get to the people who are doing the research on humans and to those who are doing research in other areas a standard grade that is universal—in other words, so that the guy in Brazil, the professor in Canada and the one in Europe will have the same material.

To make this silly story even more complex and to unravel another parameter, if you take a sample at 8 o'clock in the morning you will get a much more potent sample than if you were to take it, say, at 10 o'clock, or at 12 o'clock.

You will notice on the left there is one sample which is of the 19-week-old plant, the THC content of which was 4.6 per cent at 8 o'clock in the morning and 2.1 per cent at 9 o'clock. Actually, the best time to harvest this Mexican variant is early in the morning, about 2 o'clock to 4 o'clock. It follows a cyclic response. We have not published this information, for obvious reasons. If the best time to harvest the plants got out you would have preparations which would zonk you right out of your ever-loving mind.

People ask, "Well, how do you know what you are talking about?" and I sort of grin and say, "I don't; I just hope I do." But we use an instrument called a gas chromatograph—this is a bank of gas chromatographs which this lady is standing by—which we use to quantitate the cannabinoids. Where most laboratories do two or three cannabinoids, we do ten cannabinoids routinely, and can do 15 for the pharmacologist. It is to the point now where we can get good research material for the various people to use.

Everyone says, "Well, you have been in this field since 1968. Why don't you know more about it?" First of all, you have to get a good standard grade of marihuana that is consistent, that is not going to fluctuate. Then you have to get a good supply mechanism developed; then you have to get quality control mechanisms of the plant material for research.

Well, the state of the art is that if you send stuff to the pharmacologist or the physician in September 1971, and he has a three-year study underway, it is quite obvious that it is going to be a long time before these results are made public. We are just now beginning to see the end of that tunnel that began in 1970-71. The results are only coming out today. There is a lot of work in the chain of command that will be coming out, but the gas chromatographs are our basic instruments.

To really show more of the problem associated with it, you can send a sample to ten different laboratories and if they use ten different solvent systems they will get ten different analyses. So, you are right back where you started.

I am happy to say that the method developed in my laboratory was recently recommended for use worldwide by the United Nations committee, so we are at the stage where we can standardize the plant material for use in laboratories throughout the world.

To take the human element out of working with it, we have developed automatic injects where humans prepare the samples and the instrument takes over and a computer runs it. Everybody wants to see something computerized as to how this plant material comes out.

If I have done my job adequately on the hashish plant material, you should not be caught napping when this botanical expert comes in and questions you about that exotic weed growing in the back.

We have gone over the plant profile very briefly and have seen a few things that the plant will do and will not do, the chemical composition of the plant. Then the question arises: What about liquid hashish? How do we know about liquid hashish? All right. We can take 250 grams of crude marihuana—say, for instance, we have a marihuana preparation that is 1.89 per cent, which is darn good stuff—extract it with ethanol and have it diluted down so that it comes out at about 24 grams of liquid hash which would assay at about 33 to 35 per cent. I have seen liquid hash all the way up to 88 per cent THC.

The THC content, as I keep stressing, cannot be used primarily as the scientific date for what marihuana will do. It can be used only as a guideline. The problem associated with the material, very simply, is that we cannot tell the people in the legal field that the individual is intoxicated on marihuana. We know what an intoxicating dose of marihuana is; we know how much it takes to get the person high; but how do we tell the people in the legal field that the individual is intoxicated on marihuana?

A person could walk into this room at this moment and be intoxicated on marihuana and there is no way that I or you, or anyone in this room, could tell whether that person was in fact intoxicated on marihuana. We do not have any analytical method whereby we can take a blood sample, an urine analysis, or a breath sample and say how much of the active principle is floating around in that person's system. This is one of the areas that has to be investigated. We cannot yet tell how much is in the human body. This is an area on which we are presently initiating a program.

I hope you realize this has been a very brief presentation on the plant material, to give you some idea of the problems facing the scientific community with respect to the plant material itself.

The next big hurdle to overcome, as far as we in the analytical community are concerned—we have worked that out—is how to quantitate this material before we give it to the individuals, and the next problem is how to quantitate how much is in a person's system. That has yet to be done!

Honourable senators, that is my brief presentation. I have tried to keep it short, as instructed, so that you can sort of fry me.

The Chairman: Thank you, Dr. Turner. Senator Buckwold will lead off the questioning.

Senator Buckwold: Speaking personally, Dr. Turner, I have found your presentation on this particular product very fascinating. It has given us a new understanding of the difficulties involved in the standardization of it. I just have two questions, and then I will turn it over to other honourable senators.

First of all, when marihuana is seized by the police, how do the laboratories identify it? Is there some test that says it is marihuana, or can it be further identified as to the type of marihuana it is?

Dr. Turner: To answer your question, senator, I will have to use my first-hand experience as to how our forensic laboratory in Mississippi and how the drug enforcement administration laboratory identify it. They first of all look at it under the microscope to see whether they can see the multicellular hairs or glands, as I showed you on the slide, and then they do what is called a Duquenois test which is a colour test to show the presence of cannabinoids, and then they do thin layer chromatogram to say it is marihuana or is not marihuana. They do not quantitations as far as to say it is 2 per cent THC, 1 per cent cannabidiol or 2 per cent cannibichromeme. They only do an identification to say that qualitatively it is cannabis, or qualitatively it is not cannabis.

Senator Buckwold: In your opinion, then, would that be the normal procedure of most police departments in this part of the world?

Dr. Turner: It would be fairly routine. Some of the more sophisticated laboratories may do a GC analysis, but the GC analysis takes a little bit longer, and it does not give you anything except good quantitation, and they are not needing quantitation, they are needing qualitation: Is it or is it not marihuana? Whereas we must deal with what precisely is in that sample.

Senator Buckwold: My next question is as to the relationship of marihuana and hashish. This has bothered me, as the Chairman knows, because there is no distinguishing between the two in the bill we have before us.

Now, I gather from your evidence as we have been told before, that hash is, in fact, cannabis of a very strong potency. Could you, from your experience, indicate to us whether there is a tendency of people to use stronger potency by the utilization of hash?

Let me explain this. In asking this previously I have been told, "Well, people just use less." In other words, you can dilute it to the point that you get about the same effect as an average marihuana cigarette—joint. I am not quite used to the language. Now, is there a tendency, or is there likely to be a tendency, for people to move into the stronger and stronger stuff, in view of the evidence that there is more and more hash coming into this country and being utilized, and should there be a differentiation in the law regarding both?

Dr. Turner: Senator, I will try to answer this Pandora's Box question, as concretely as I can without evading the question. Marihuana and hash are two crude drug preparations from the plant cannabis. Now, marihuana, as we see it in the States, varies from a very low THC content to a very high THC content, and people who smoke it do not know what they are buying. The hash, on the other hand, is the resin of the plant, which is easier to transport in the illicit market because you concentrate the plant material

down to a liquid or hash form, and the hash may run from 0.2 all the way up to 6 or 7 per cent, but the point being that people have been conditioned to believe that hash is more potent than any form of marihuana.

Now, do they or do they not consciously or subconsciously seek to have different THC levels in their product? I don't really know. We see confiscated samples of hash and marihuana, and it seems to follow a cyclic pattern. In other words, if the hash in 1973 is fairly potent, 4 per cent or better, then in 1974 you can probably anticipate a diminution of the THC concentration.

Some of the people I have talked to who use it do build a tolerance to it, and this is well documented in the Greek studies where they are requesting 4 per cent THC to give them their high, but we know the effect of one per cent.

So, if we look at the long-range thing and go with the Greek study, we find there is a tolerance built up and people do demand it. Whether this would be done on a person using it for three or four months, I cannot say, sir; I am sorry, I wish I knew the answer. I have answered it as best I can on first-hand knowledge.

Let me add here that at Mississippi we have a bibliography on marihuana, with all the papers published on marihuana or a scientific nature. The United Nations did one up until 1964, and in 1964 we took over the bibliography, so we have every paper published on marihuana from 1964 to the present. In reviewing all of these I have not found any evidence that people want to increase the potency of the plant material. I cannot say categorically, but I cannot see any scientific data to show that, except over long periods of time tolerance does develop and people do demand more to get the same level of high.

Senator Neiman: Dr. Turner, would there be different quantities of hash produced from different types of plants? For instance, the lower grade plants you were talking about, would they be capable of producing hash such as the plants that might grow in Canada and the United States, as opposed to some other place?

Dr. Turner: The answer to that is categorically yes.

Senator Neiman: You mentioned that you cannot measure the THC or the effect of the ingestion of THC or cannabis on a person in any sense. You probably know that we are considering the penal sections relative to the use and trafficking in or selling of cannabis products. Of course, we are conscious of what the law is now in Oregon. Would you suggest that that is not a very practical approach to use, such as is now in force in Oregon and is being contemplated in other jurisdictions, to define the use of marihuana in any quantitative terms?

Dr. Turner: Senator, that is a very difficult question to answer. I think one would have to make some guidelines as to where the cut-off is going to be. In our own state, which is not exactly like Oregon, we have two laws. We have anything under an ounce is considered to be a misdemeanor and anything over an ounce is considered to be a felony. This is left to the discretion of the jurist.

Senator Godfrey: Consider what?

Dr. Turner: Anything under an ounce is considered to be a misdemeanor and anything over an ounce is considered to be a felony.

Senator Godfrey: The English require an instantaneous translation!

Dr. Turner: Well, I guess I ought to put on my real southern accent.

Senator Croll: What are the penalties involved?

Dr. Turner: The penalties involved are up to the judge in that particular case, and then the situation has evolved as to what is an ounce and what is not an ounce.

Senator Croll: I wanted to ask you about that.

Dr. Turner: If you take 100 grams of herbal material you can condense that down to ten grams, and you can increase the potency say, from 1.89 per cent to 31 per cent. You could take the plant material that has a THC content of only 0.4 per cent, which is very similar to what we find grown in the United States, and probably some places in Canada. You could take ten ounces and concentrate that down to one ounce and come up with a THC content of 9.8 per cent. So I do not know if I am qualified to say how that experiment is going to work. There are a lot of problems involved in where you cut the line.

Senator Neiman: How long has your law been in effect?

Dr. Turner: I think the law in Mississippi has been in effect for three years now, the Controlled Substance Act of Mississippi.

Senator Neiman: Are scientists such as yourself called upon to testify in court when they are trying to define this?

Dr. Turner: Well, I try to stay out of court as much as possible. I have a policy that none of the people on my staff are allowed to testify in court because we have many, many law students who have worked for us on the project. The young lady you saw a moment ago with the instruments, her husband is an attorney 20 miles away, and these alumns have told me that, "As long as none of your people ever appear in court we will never subpoena you, but if you ever appear in court you will never be able to get any more work done!" Under that guise, I do not appear in court and it took a lot of twisting to get me to appear here today.

Senator Neiman: May I just ask you, have you heard cases involving the prosecution with regard to the quantitative analysis, where this is called into question, and also where this involves a legal opinion or a medical opinion to try to define the extent of the crime?

Dr. Turner: Yes, we were called in on one with cookies. An individual had a series of cookies—of chocolate chip cookies that tasted very good too—but they had marihuana in them, and they charged him with a felony, because they took the weight of the cookies, and they wanted to know, "Can you tell us how much marihuana was in there?" Now, you are entering into a problem that requires a lot of time and effort. We ultimately quantitated it, but we did not tell them whether it was one ounce or over one ounce. There were roughly nine milligrams per cookie, and it takes only about three or four to get you high.

If you look at it one way; probably if you look at the THC content, they do not have an ounce, but if you look at it the other way, they have more than an ounce of material containing the THC. So here is the analytical data and the lawyers, the defence and prosecution, make their own decision on it.

Senator Croll: Assuming one ounce were found, what is the minimum penalty?

Dr. Turner: If an ounce were found?

Senator Croll: Or less than one ounce; something of a definite nature. What is the penalty?

Dr. Turner: That is up to the judge in each particular case.

Senator Croll: What is the maximum?

Dr. Turner: I do not know, senator, because our law is ambiguous in the State of Mississippi.

Senator McGrand: I understood you to say that marihuana collected at 2 a.m. could have a higher or lower specific content than a specimen collected at 7 a.m. What is the explanation?

Dr. Turner: Senator, I do not know of anyone who knows the explanation, because we certainly do not, and we have been investigating it since approximately 1968 in an attempt to discover what happens to it. I wish I knew, but it is there and it is present and we can quantitate it, separate it out and get it into pure form and say, "Here it is." However, what happens to it after that is the subject of several proposals, none of which really fits the data.

Senator Prowse: We can obtain from the medical authorities a fairly definite answer to the question of how quickly the body metabolism can get rid of alcohol. We had evidence recently that apparently this THC is absorbed by the fat of the cells, which means a much slower process for the body to get rid of it. Can you give us any answers to that?

Dr. Turner: Yes; Dr. Axelrod and his associate, Dr. Lemberger, carried out the original studies. Let me clarify it: They were able to quantitate it in the blood, in the feces and in the urine, because they used radiotracer techniques. They found that the half life of the THC in the system of a naive smoker is 56 hours. The half life in a chronic smoker is approximately 26 hours. They could still find radioactivity in the system eight days afterwards. This was some of the original work done with Dr. Axelrod's group in 1971.

Senator Prowse: Beyond that business of it slowly going out for eight days on a half life basis, though, is there any evidence that it builds up beyond that? For instance, if a person smoked for a continuing period of time would there be a continuing build-up in the system?

Dr. Turner: There is evidence to show that it does accumulate quite readily in the fat cells. It is protein soluble and will accumulate in the body. It is a difficult thing to analyze, because if you take human serum and add 100 milligrams of THC, mix it up and try to quantitate it, it took us about four weeks to develop a method, knowing how much we put in, to get it out. However, it does accumulate and is stored in the body. Some results are coming out now showing that it does accumulate in certain brain cells. This would have to be validated with more reputable work, but it is a good indication that it is stored in more or less every part of the body.

Senator Prowse: There is, then, at the present time no assistance similar to the breathalyzer or blood analysis to enable us to say how much one person has?

Dr. Turner: There is one process which was developed by Dr. Stig Agurell and his group at Karolinska Institute

in Stockholm. Stig says that he can quantitate it, but it is by using an instrument known as the mass spectrometer, which is a very expensive instrument—ours cost approximately \$99,000 when we purchased it—with a computerized system, and it can handle only about four analyses per day. It can be done, but not on the routine, as we say, of breath analysis or urine analysis for the heroin addicts. For cannabis we do not have a system at the present time which would be economical to put into use.

Senator Choquette: Did I understand you, towards the end of your presentation, to say that it is most difficult or almost impossible to see or detect a person under the influence of marihuana?

Dr. Turner: Yes, senator.

Senator Choquette: In the case of a person who is under the influence of liquor, when a police officer is asked what led him to believe that this person was under the influence of liquor, he will say, for instance, "His gait was unsteady, his speech was slurred and he could not walk a straight line. He was given several tests which he could not fulfil." I have seen people under the influence that look stupid to start with. If you walked on our Mall here in the summertime and saw them, with their bare, dirty feet and muddy eyes, they seem to be in another world. The boy and the girl will hold hands, but could not carry on a conversation. They just look at you with a stupid look and you wonder if they are in another world, or here on the Mall.

Now, surely if someone went to court and said that was their behaviour when he observed them, and it was known that they had smoked hashish or marihuana, could not a judge be justified in deciding they must be or were under the influence of marihuana or hashish?

Dr. Turner: As a scientist I must say there is no way it can be proven, senator. That would be an observation which, in my opinion, the court would have to take into consideration.

Senator Choquette: If there were many cases in which those types of outward signs were obvious, could it not be concluded that such persons were under the influence of hashish or marihuana?

Dr. Turner: There would probably be an individual using something else, a prescription drug or a mixture, which would give the same type of response.

Senator Laird: Dr. Turner, perhaps it should be explained that we are here in committee in connection with a bill before Parliament having to do with the use of this substance.

Dr. Turner: Yes.

Senator Laird: It may interest you to know that, amongst other things, this bill increases the penalty for cultivation. Therefore, it becomes of some importance to us to ask you to assist us as to whether or not you are acquainted with the type of plant which is indigenous to Canada. I appreciate there are variables and I do not understand them, but can you generalize in any manner as to the type of plant that can be grown in Canada?

Dr. Turner: A generalization as to the type of plant that can be grown in Canada: Any variant can be grown in Canada. South African variants have been taken from South Africa which are reputed to be very potent material and have been grown in Norway and still produce very

potent material, so it is possible to take any variant on the face of the earth and grow it in Canada. Dr. Ernie Small and Dr. Harry Beckstead grew approximately 350 different variants, or 350 different seed stocks—they did not name them variants—right outside Ottawa.

The next part of that question was: Am I familiar with the wild stuff that is growing, the wild material that occurs in our country and—I have to assume—the wild material that grows in Canada?

Senator Laird: It does.

Dr. Turner: That is a carry-over from World War I and World War II, when we grew hemp for fibre. That material is classified routinely as a fibre type which has a lower amount of the active constituent in it. However, that does not mean that if someone brings in a high producing THC strain from Mexico and grows it wild, a cross-pollination will not occur, and I can assure you, you would see an increase in the THC content of the wild material. So those are three possibilities. I hope I have not belaboured the point. Those are the three possibilities as I see them, sir.

The Chairman: We shall now have the final question. Senator Croll.

Senator Croll: Following Senator Choquette's question, when you said there was no way to indicate whether or not a man was under the influence, time and time again the courts have said that so-and-so was under the influence of drugs when he committed the offence. We accept it as being a reasonable finding. How do they come to those conclusions if you say it is not possible to ascertain that?

Dr. Turner: Subjectively looking at an individual, I do not believe that there is a person in the world who can say categorically, "This person is on marihuana." However, if you take that person and put him in a clinic, you can determine at what point the high starts by the increase in blood pressure and the tachycardia. I would hate to say—perhaps I am not answering your question correctly—but I just do not know of anyone who can look at a person and say, "He is high on marihuana." They may say he is high on drugs, which, as you say, they can do, but I do not know how they are going to prove it.

Senator Croll: I said drugs. They do prove it. The courts accept it, and some poor fellows are suffering because they have been so found. They seem quite satisfied that it is a fact, but you say it is not possible.

Dr. Turner: Not with cannabis. The problem also with cannabis is that you find very few pure cannabis users: most are multi-drug users; they use cannabis and other drugs. We find it quite frequently mixed with alcohol. They will take a wine bottle and extract their leaf material with ethyl alcohol and put it in the refrigerator and keep it stored in a wine bottle.

Senator Croll: Does it improve the alcohol or the drug?

Dr. Turner: I think that may be a mutual thing. The taste of alcohol is probably really messed up, but the high is probably better.

The Chairman: Thank you very much, Dr. Turner, on behalf of the committee, for a most interesting exposition. Our next witness is Dr. Patrick McGeer, of the Faculty of Medicine of the University of British Columbia. Honourable senators will certainly give him special consideration

since his uncle was a member of the Senate! Would you please proceed, Dr. McGeer?

Dr. Patrick L. McGeer, Faculty of Medicine, University of British Columbia: Mr. Chairman, I remember reading a newspaper account, before he was part of your august body, in which he had appeared in this very room over 40 years ago. He had so much to say the first day that some of the opposition senators suggested that he might come back the next day. The chairman said, "It is one thing to turn a hose on, but something else to turn it off!" I hope the material I have to present today will not provoke that kind of controversy; but I wish to explain to you that it is in three parts. These bear, incidentally, on my qualifications as a witness. First, I do brain research and direct the Kinsmen Laboratory of Neurological Research at the University of British Columbia. In that capacity I have directed original research on the subject of cannabis. In this area I feel I can be an expert witness.

Secondly, in connection with this work, we have to be familiar with the scientific literature. I will not try to give you a balanced account of the thousands of papers on cannabis that have been published, but only to draw your attention to certain papers in the literature which we consider to be of significance.

Finally, I am going to offer some views on legislation as an elected member of the Legislative Assembly of the Province of British Columbia; and in this, I can only offer opinion, and, I suppose, to candidly admit that in this last category I am a controversial subject. But that is the state of politics, and your credibility, as you know, varies with political persuasion. Senator Robichaud knows that. I come from the city of Vancouver. I represent part of that city, and I am sure you are aware of the fact that Vancouver per capita has the worst drug problem in Canada and perhaps in North America.

I want to mention at the outset that the research that we have done in our laboratory at the University of British Columbia has been sponsored by the National Health and Welfare Department, and many of the experiments have been done by my excellent colleagues, Dr. Alexander Jakubovic and Dr. Toshiaki Hattori. At the time we commenced our own research on marijuana, we were struck by the many observations that had been made—not scientifically proved—that the smoking of marijuana affected learning and memory and particularly mental acuity. This supposition seemed to have been supported by controlled experiments which had been done in animals.

It is hypothesized that learning and memory at the molecular level are related to nucleic acid and protein synthesis. So we suspected perhaps THC, which is the principal active component, psychoactive component, in cannabis, might interfere with protein nucleic acid synthesis; and we were quickly able to show, using slices of brain tissue, that this was indeed the case. This was the initial report of this particular action of cannabis.

Next we wondered whether or not this material could produce structural changes in the brain *in vivo*. In other words, could the biochemical changes which you observed be carried over into the structural area? We next looked at infant rat brains by electronmicroscopy to see if we could see changes following the acute administration of THC. When we did this, we found that indeed there was one significant change, which was the stripping of the nuclear membrane off its nuclear membrane bound ribosomes. I have actually brought a poster of that along. Again this

was an acute experiment involving very young animals and high doses of the agent; so that one could very well say, "Well, this is an animal experiment and there is no problem really."

Then we decided to pursue other reports, which indicated that a surprisingly high proportion THC administered and labelled turned out in the gonads and also in the other reproductive organs and the mammary glands.

It had also been reported that THC crossed the placental barrier and produced teratogenesis in some animal species. This, as you know, was the great criticism of thalidomide.

So we obtained from the federal government some radioactive THC and we were able to demonstrate that, after a single injection into the jugular vein of a lactating ewe, radioactivity was secreted in the milk for at least the following 96 hours. We obtained the milk from the ewe and we continued to get labelled material. Moreover, when we examined the urine and feces of the suckling lamb, we found that it too contained the radioactive material.

Then we went back to rats and gave high doses of THC to mother rats and examined the organs of the infant rats which were suckling. We found there not only the presence of THC derivatives in all the organs of the rats, but the same changes in the brain cells that we had found when we gave the agent directly to the young animal.

Now, we have carried this on to show that there is also an inhibition of protein and nucleic acid synthesis *in vitro* in the testes. As you probably know, this is an area of very high nucleic acid and protein metabolism, because these are the main constituents of the sperm which are continuously produced through life. Moreover, we were able to identify a particular step in the biosynthetic sequence, namely, the phosphorylation of nucleotides that could be responsible for this inhibition.

That summarizes the fundamental work that we have done up to this point in our laboratory. People are going to ask, naturally, whether this applies to the human situation. That question simply cannot be answered at this time. Further research is required. However, the inhibitory effect on protein and nucleic acid synthesis which we have observed may be of considerable importance because of the fundamental role these materials play. DNA is the master molecule of the body. RNA, the other nucleic acid, is transcribed from it, and this is the template from which protein is continuously produced in the cell during life.

I should like to take you from our own research to the scientific literature. I am not going to attempt to give you any balanced judgment about the literature. I can refer you to some excellent textbooks on cannabis, the best of those recently produced being by Mechoulam from Israel and Nahas of Colombia University. Also, there is a great deal of information in the report of the Le Dain Commission and some very interesting scientific articles reproduced in the hearings of the Eastland Committee of the United States Senate.

I want to come to what I consider to be the most interesting of these many, many reports. The first thing that comes out is that the cannabis group of compounds are extraordinarily fat soluble. Paton states that the octanol water partition coefficient, which is a measure of fat solubility, is 10,000 times greater for cannabis than alcohol. Only substances such as DDT rival it in that regard.

I should remind you that DDT reaches maximum levels in the tissue of man only after a year. I should tell you, as

well, as you heard from the previous witness today, that THC is similarly retained by the body, and this is undoubtedly because of this high fat solubility.

Nobel Prize Winner Dr. Axelrod showed that after repeated injections into rats, there was a tenfold greater accumulation of radioactivity in fat than in other tissues. But the most interesting part of his experiment and those of Dr. Ho of the United States is that the brain has a greater tendency to retain this label. Indeed, Dr. Ho showed that 75 per cent of the peak level in brain tissue was still there after seven days.

I am not going to go over the half life experiments that have been done on humans, because that was dealt with a few moments ago. The important point to remember is that people who smoke cannabis regularly are almost certain never to clear this agent completely from their bodies. The animal experiments which have taken place would imply that there could be a gradual accumulation of the drug in tissues, such as occurs with DDT.

Occasionally there are flashback experiences on the part of marihuana users. Some scientists have speculated that these flashbacks are due to a sudden mobilization of the drug from the fat tissues into the plasma and from there into the brain. It is known that the DDT concentrations may increase in the brain when rats are put on starvation diets because of the mobilization of fat stores. When high doses of marihuana are administered chronically to developing rats, there is a decreased brain size and a decreased nucleic acid and protein concentration.

In the brief I have placed before you, honourable senators, you will see the references to the literature where you can find full details as to the work that has been done.

It may be that the late Dr. Campbell of England made the comparable observation in humans when he found brain atrophy in a group of young cannabis smokers by pneumoencephalography. He attributed this to the fact that the most important common denominator was heavy cannabis use. Drs. Kolansky and Moore of the University of Pennsylvania have also noted clinically mental deterioration in cannabis users. They have recorded poor attention span, an inability to bring thoughts together, poor concentration, confusion, anxiety, depression, apathy, passivity, indifference, and often slowed and slurred speech in chronic cannabis users. Senator Choquette has made casual observations, I gather, along the Mall here in Ottawa.

The interesting thing about the Kolansky Report was that symptoms reversed only slowly after cessation of the drug. They recorded residual effects three to 24 months afterwards.

Reports have now appeared indicating that other systems of the body sensitive to nucleic acid and protein synthesis are affected by marihuana, the reproductive system and the developing embryo being examples.

Dr. Robert Kolodny of St. Louis recently reported decreased fertility, decreased sexual potency, and reduced testosterone levels in young males who had used marihuana at least four days a week for a period of several months. Other reports have found gynecomastia, which is enlarged breasts, in male users.

Turning now to animal studies—because these are the only ones where we can reproduce documented information about the embryo—several investigators have reported either decreased litter size, increased post-natal mortal-

ity or frank teratogenesis in such small animal species as mice, rats and hamsters, following administration of THC or marihuana extract during pregnancy. These were not found in every study.

Berlin and Jacobson, in reviewing the human literature conclude that human teratogenic effects of marihuana are unknown; they have not, so far, been discovered. However, they do draw attention to the fact that the heavy use population has high infant mortality.

In our own country, Dr. Zimmerman, who has done some brilliant work at the University of Toronto using protozoan tetrahymena, showed, as we did, a decreased DNA, RNA and protein synthesis in this simple organism.

I was at a conference on marihuana yesterday in Toronto and Dr. Kalpant, who I believe was on television not too long ago, described his results on irreversible damage in the learning process to rats given this agent.

Turning again to the human situation, we may have some comparable experiments to those that have been reported by Nahas and his colleagues from Columbia University. What they did was to take blood cells, lymphocytes, from chronic marihuana users and incubate them, the results being decreased DNA synthesis, decreased cellular mediated immunity and increased chromosomal breakages. Chromosomal breakages had previously been reported by Dr. Stenchever and his colleagues, and although there is one negative report on this, it should, at least, be regarded as a signal.

Of even greater concern has been the report of Dr. Leuchtenberger of the Swiss Institute of Experimental Cancer Research in Lausanne who described precancerous changes in cells in chronic marihuana users.

There is a pattern which emerges from all this. At the core of it all is the fact that the types of tissues that have been affected are those which are most sensitive to nucleic acid and protein synthesis. Once again, DNA is the master molecule; it is the genetic material. RNA is what duplicates from it in the process called transcription. Then from there this template RNA repeatedly produces proteins which are the enzymes that carry out all the biochemical processes which form much of the structural material of the cells. No cell can function normally if these processes are interfered with. I say in my brief that cannabis is unique amongst drugs of abuse in producing this effect. It is also unique in being retained by the body for long periods of time.

I might be challenged by some scientists by maning these statements because if you go to high enough concentrations of some other drugs you can produce similar effects. The more of the drug you take, generally speaking, the longer traces remain in the body, and if you are given toxic doses of any agent it will interfere with these fundamental biochemical mechanisms.

The thing about cannabis, as we understand it from our own research and interpret the research of others, is that it has a particular effect on these processes. We believe it interferes with the phosphorylation of nucleotides, but that remains to be established.

I think there is little doubt that those who use cannabis regularly—and by that I mean once a week—will be continuously exposed to that agent. It is not like alcohol in being metabolized rapidly.

Here is how I would summarize the scientific literature: it points to this long term retention of cannabis derivatives; it points to the interference by cannabis with the de-

cellular processes of nucleic acid and protein synthesis. We do not know all the manifestations of these effects.

Those clinical reports that tie in, however, are those which indicate, interference with mental processes—I think I should point out that the brain is not noted for division of cells, but is very sensitive to change; the brain must adapt; you have to be able to learn; you have to be able to remember. This plasticity or adaptability of the brain seems to depend, and be very sensitive to, these key biochemical processes. It is my belief that much more will be heard about the effects of marihuana on these higher functions of the brain. You have to remember that physicians lack test, adequate tests, of mental acuity. The people who notice it first are the teachers and the parents. If mental dullness begins to superven, then they know almost immediately. It was on the basis of these kinds of reports that we were instinctively led to do the fundamental experiments that we did. In any event, now there are clinical reports of front brain damage as a result of high cannabis use; reports of decreased fertility and sexual potency, increased infant mortality, decreased cellular immunity and precancerous cellular changes. How important these things are, of course, will depend on the future clinical reports.

Now, I want to turn to some of the suggestions for legislative action. The marihuana hashish cult is approximately ten years old on this continent. Strong efforts were made by the partisans of cannabis to stress the pleasurable aspects of this drug, to discount the dangers, and to neutralize the legal deterrents to its use.

We have had an extremely rapid increase in the level of consumption. I believe that is testimony to the effectiveness of these efforts. There is no doubt that a great deal of reassuring literature, particularly in the non-scientific sphere, has persisted with respect to cannabis use. It was made to seem as an attractive entry into the realm of the drug experience. An astonishingly large number of multi-drug users started with marihuana. Of course, only a small percentage of these go on either to regular cannabis use or to other drugs.

A recent survey amongst Vancouver secondary school students showed that 42 per cent of them used cannabis in 1974. That is marginally up from 39 per cent in 1970. A survey of the 7th and 8th grades in a San Francisco area junior high school showed that 33 per cent had used the drug. Queen's University percentage of users was 47 per cent. Estimates show that there are 20 million to 25 million North Americans who have tried cannabis. In the United States 350 million grams of marihuana and over 25 million grams of hashish were seized in 1973. That is equivalent to 500 million doses—intoxicating doses—that were seized. I think it is safe to say that the number of intoxicating doses of cannabis being consumed by North Americans today must number in the billions. Therefore, it would be a considerable understatement to say that a potentially public health hazard exists.

One of the great dangers of the legislation placed before your committee is that it may reinforce the many false reassurances that have already been given regarding the blandness of marihuana as an intoxicating agent.

I draw your attention to two evidences from Vancouver. Huge headlines in the afternoon press on the day the bill was introduced stated "Bill Eases Penalties for Marijuana, Hash". I heard the radio newscast which began, "The drug users of Canada are celebrating tonight." I ask you this:

how can the young people of Canada, the 13- to 16-year olds—and, if we believe the statistics of Vancouver, that is over 40 per cent of them—be persuaded that marihuana is dangerous in the face of this interpretation of your bill?

It may be logical to remove it from the Narcotic Control Act, but cannabis is not a good, and in the therapeutic sense it is not a drug. I consider it unthinkable to consider legalizing marihuana or hashish. I am afraid that the legislation, as it now stands, might exacerbate what appears to be a growing problem, perhaps, not in the city of Ottawa, but certainly in the city of Vancouver.

As a physician I want to disassociate myself from the brief presented by the Canadian Medical Association and the position they took. I do not believe that opinion is shared by the majority of Canadian doctors. At the time when the dangers of cannabis are just beginning to be appreciated it is simply not responsible to condone legislation, or to support legislation, that appears to condone even partially its use.

Ideally, I think this bill should be rejected and a new one written, a cannabis control act. Cannabis is an agent all its own; it is a social problem all its own. It may be possible to amend this legislation to incorporate what I consider to be appropriate principles. However, I still feel that dealing with cannabis as a family drug, non-therapeutic, as a problem on its own, is the appropriate way now in which to approach this problem.

These are the things which I would consider to be appropriate in legislation.

For first time possession of one ounce of marihuana, or less, no jail sentence, but a fine coupled with a compulsory drug education course which does not soft-pedal the use of marihuana but tells the full story.

For subsequent offences a registration of the individual's use with medical authorities and provision for public treatment by medical or social authorities, depending on the situation, provision for imprisonment with parole to community service programs. However, the penalty for breaking parole would be serving out the full sentence.

For cultivation, importation, or trafficking, a mandatory jail sentence. Possession of more than one ounce of marihuana should be automatically considered by law as "possession for purpose of trafficking."

You would want, I am sure, to define the amount of THC which would be contained in one ounce. That would be approximately 300 milligrams of Delta-9 THC, enough for 30 intoxicating doses, which would be a pretty good first experiment for any individual.

Such an act would make it clear that the federal government considers cannabis to be a hazardous agent and those who use it capable of harming others as well as themselves. There is no doubt that users recruit non-users. Drug abuse spreads along the same epidemiological lines as infectious disease.

The first-time offender, temporarily drawn into the drug cult, would face nothing more serious than a fine plus an obligation to learn the truth about the agent which he is using. If he failed to get the message and continued cannabis use, he would be running the same risk as any criminal.

These may sound like severe measures to you, gentlemen, but I believe that we must give greater protection to our young. The attitudes regarding drug use today are ambivalent; those who are paying the penalty are the 13- to

16-year olds. The deterrent value of legislation is an important one because it is on this basis that protection is given to society. It is important to have a law work well for those who come into conflict with it. It is important that it works well for the drug abuser, but that is not the only consideration. I submit that the protection of those not now caught up in the drug cult is the most important aspect. The sources of supply must be dried up and those who are irreversibly established in the drug cult isolated in their own social sphere.

I am convinced the corner can be turned on the drug problem once we develop the will to do so.

The Chairman: Thank you, Dr. McGeer. I have the following names, upon which I shall call in the following order: Senator Prowse, Senator Croll, Senator Neiman, Senator Godfrey and Senator Choquette.

Senator Prowse: Doctor, when you refer to damage done, I assume it was damage done to the brain cells, your reference to irreversible damage.

Dr. McGeer: As a matter of fact, the particular observations we made were reversed in a matter of hours. However, we did not carry out the chronic experiments of repeatedly administering the drug and looking for the long-term effects. Comparable experiments to those I have described have been carried out in other laboratories. When this was first published not a great deal of attention was paid to it: "Oh, well; that is a small experiment on rats, no problem". The picture only begins to emerge when the isolated reports carried in the literature are connected together and the sum of these parts describes what I consider to be a very important whole. Up to this time it has been soft-pedalled or ignored, but in my opinion a total story is being put together now which simply cannot be ignored.

Senator Prowse: Would that apply to all these matters you described, such as the pre-cancerous changes in the cells? Where these irreversible?

Dr. McGeer: I cannot answer that question. Those who have carried out the research could be brought before this committee. Their testimony in the case of pre-cancerous changes was given to the Estern Committee in the United States Senate by Dr. Cecile Leuchtenberger. You can read her testimony to the U.S. Senate by consulting those hearings.

Senator Croll: Doctor, I move over to page 10, where you state that very often the marihuana, hashish cult on this continent is almost 10 years old. I suppose if it is 10 years old on the continent, it is 12 years old in British Columbia, or at least 10 years old?

Dr. McGeer: At least, senator. When it comes to drugs, we are in the vanguard in Vancouver, I can tell you that.

Senator Croll: Now let me put this to you, doctor: Ten years ago we put a tough law on the books. Ours is a pretty tough law compared with others and you have heard the witness from Mississippi, where no one even understands the laws. However, at least we have a tough law here, a good police department, the RCMP, lots of money thrown into it and we have had the problem for 10 years. At the end of that time we have come to the conclusion that we are not making headway and we must change course. That is the opinion of these various people. You say that is wrong and maybe we ought to harshen up the law.

Dr. McGeer: In my opinion it needs to be revised. Those who have been innocently caught up in this drug cult need to be treated gently and informed. Those who have taken advantage of the poor surveillance, or poor application of the laws should be treated harshly. In british Columbia, as you probably know, there is roughly one drug-connected murder every 10 days in the city of Vancouver. There is a continuing underworld was based on the economics of supplying drugs. It has not worked for marihuana, it has not worked for hashish, it has not worked for heroin either. I do not believe the laws passed are the problem. In my opinion it is the manner in which the laws have been received by the public and the way they have been administered. I am sure you have had testimony from the RCMP, who complain that they have not received sufficient support from society in the job they must do. Their attitudes are very different from the attitudes of people who are handing out the sentences in the courts, or the people who are dealing with those that have been judged criminals and placed behind bars.

I realize that the writing of the law, which is your responsibility, is only part of the story. But I submit that if you, in writting that law, give in to the counter-culture attitudes, you are going to exacerbate what in the city of Vancouver is still an escalating and very severe problem. I think a good law has to be written and I think very serious thought has to be given to how that law should be applied by the police and the courts. It is beyond my competence to really offer specific suggestions. There are plenty of people who are much more qualified than I.

Senator Croll: When the RCMP were here before us, they did not complain about the fact that they were not supported. The very same question I asked you, I asked them in the very same way. The answer was, "We just did not succeed; that perhaps this is not the way to go about it." Let me follow up on that. You do know that Britain and Sweden have taken another course altogether, a much softer course, with far greater success than we have had.

Dr. McGeer: Senator, most areas of Canada were completely drug free, with the laws we had on the books for many years. The city of Vancouver, and a small part of the city of Vancouver, was the only area where there was a lingering drug problem. We just did not work hard enough in the city of Vancouver to completely clean it up. But other areas of the province, and other areas of Canada, simply did not have drugs. It was not worth anyone's while to supply them because there were not enough drug users around to supply a market.

Our drug laws work very well in most parts of Canada. The problem has broken out of the city of Vancouver. Almost any city in British Columbia of any reasonable size now has a substantial drug problem. The sources of supply have spread outside the city of Vancouver, and many other communities have been infected with the drug disease. There are areas of the world, because they are relatively clear of drugs now, where you can make a different kind of law apply than one which would work for the city of Vancouver. I attribute the lack of drugs in most parts of Britain to the fact that there just was not an infectious disease in that area. They have the problem now and they are going to have to change their attitudes. There was a beautiful epidemiological study done in one small town in Britain that had been completely drug free, where four young drug users moved in, and from those four people they traced an epidemic of over 1,000 drug users in one small town. It soon developed the highest incidence of drug

abuse of any town in Britain. There was a scientific paper written about it. It was quite an interesting one. So you have to think not in terms of how a law works in one place relative to your own, but what their historical problem is.

Senator Croll: The committee has in fact been interested in reducing penalties, as indicated in the act, decriminalization of the offender, and legalization. We have discussed that. I have followed your brief and I read it with you. In the last two sentences you threw me. You say:

The sources of supply must be dried up, and those irreversibly established in the drug cult isolated in their own social sphere.

Immediately a leper colony came to mind. What are you thinking there?

Dr. McGeer: Not at all, senator. What I think would be helpful for British Columbia today, and possibly to other areas in Canada, would be to make it much more difficult for people to bring the drug into the province. What is happening is that with the generally permissive attitudes that are developing, more and more of the agent is available, it is being taken around the schools of British Columbia with the reassurance "Try a bit, it is fine, you will not get into any trouble." I suppose, if the present proposed law is passed, the people who supply the drugs will say, "Go ahead and have a little, and if you get caught with it, I will pay your fine."

So I would see nothing but reassurance and comfort coming to those who are bringing the drug in and to those who are supplying it to the school children. Perhaps that is a wrong interpretation. You will remember that at the outset I said in this sphere it was opinion only and that I cannot pretend to be an expert. But we do have a problem in Vancouver which is different from most parts of Canada, especially Ottawa, we have people going and selling marihuana and hashish around the school grounds and over 40 per cent of the kids are using it.

Senator Croll: So do we. Every problem you have got, we have it here, although perhaps not to the same extent. You are a very interesting witness. Let me ask you this: you think that perhaps the medical association is not speaking for all the doctors. It is only my own opinion as against yours. I can tell you that I have heard no objection from any doctor for a long time. On the other hand, do not forget that the medical association said "Go slow." Do you not agree with that?

Dr. McGeer: Senator, I think a new act should be written. I think this act has been given the wrong interpretation. I think it has given, even to this stage, encouragement to those people we want to discourage. That is why I am before this committee.

Senator Croll: You say the medical association has done that?

Dr. McGeer: Not the medical association. I am talking about the bill.

Senator Croll: I asked you about the medical association. I said this is my interpretation of what they said. You disagree with them. You think that most doctors disagree with them. I said that perhaps you had misinterpreted them when they said "Go slow."

Dr. McGeer: The brief, as I interpreted it from what I read, was strongly supportive of this legislation, strongly

supportive of decriminalization, strongly supportive of a "go soft" approach. They are not supporting legalization. In that I am in agreement. But I think that at the present time there is a responsibility on the part of anyone in a legislative or scientific position to be aware of the facts, and to transmit those facts to people who have accepted another interpretation of the potential hazards of cannabis; namely, that there are no hazards and it is a fine thing to have and why don't we legalize it.

Senator Croll: The doctors did not say that.

Dr. McGeer: I understand that, senator.

Senator Croll: The criminologists who deal with the end results over a period of many years are, some of them, very experienced people. They think that we are much too harsh with our law and we should make some changes in line with what is being done in other countries, Britain and Sweden particularly; and they suggest some form of legalization. Can you see any benefit there at all?

Dr. McGeer: It might be of benefit to the drug user, senator, but it would be of no benefit to the non-user and of little benefit to society. There is a difference between prevention and treatment, if I can use a medical analogy, and every doctor would tell you that the best treatment for a disease is prevention.

I do not believe our laws should be styled to deal with the criminal as the prime focus; they should be styled to serve society as a whole, and particularly to protect the innocent. Those who are not being protected today are the very young. Parents are not going to start smoking pot at age 40, but they are afraid their children might, because so many of them have. Parents know far better than criminologists, or doctors, or scientists what the effects are. They can see it in classroom performance right away. They are the most acute observers. It is from these people that our own laboratory took its cue.

The Chairman: I am sorry, but time is running out. I have to call on Senator Neiman.

Senator Neiman: Thank you, Mr. Chairman.

Dr. McGeer, at page 6 of your brief you refer to the clinical findings of Berlin and Jacobson with respect to chronic cannabis users. Unfortunately, I have not read any of their papers on this. Could you tell us whether those experiments were controlled to the extent that they were satisfied that they were dealing only with cannabis users and not with multidrug users?

Dr. McGeer: They were satisfied that the effects were due to cannabis and no other drug, senator. I am sure you would find the articles very interesting to read. They are not technical medical articles, and can be easily understood.

Senator Neiman: If, in fact, any of the people they observed had at some time or another also used other drugs, then I do not think their conclusions might be as persuasive.

Dr. McGeer: They stated explicitly in their papers that time was as a result of cannabis and nothing else. One of those papers was published in the Journal of the American Medical Association in 1971 and another in the same journal in 1972. At the time of the publication of those papers they were attacked. At that time a great number of people were pushing for legalization of marihuana in both the

United States and Canada, and those people found these reports most unwelcome. As a result, they were attacked. However, the observations have started the test of crime. Certainly, I think this is a key one.

Senator Neiman: At page 6 of your brief, Dr. McGeer, again in relation to the findings of Berlin and Jacobson, you refer to high infant mortality in the heavy user population. In what areas of the world was this study conducted? For example, if the study related to what we might call the Third World, it would have to be viewed in a different light.

Dr. McGeer: This was a survey of the literature conducted by Berlin and Jacobson. What they did was to evaluate published reports from many countries.

Senator Neiman: But these findings would not be valid in the United States or Canada.

Dr. McGeer: I think you would have to read the article yourself, senator, in order to judge whether or not they would be valid.

Senator Neiman: I have read some articles in this area, and it seems to me that most of the information we are getting in this regard emanates from countries which we would characterize as Third World countries with long histories of high infant mortality rates. There again, I believe the findings cannot be conclusive because you are also dealing with countries where there is a chronic cannabis problem, which would also lead to a high infant mortality.

Dr. McGeer: There is no question about that.

Senator Neiman: It is difficult to isolate a factor in that sense. It is obvious that as a physician you are extremely concerned as to the potential danger involved in the misuse or abuse of cannabis, and you are also a man who is deeply committed to public service. You are equally concerned as to how we are going to deal with this problem. However, I question some of the conclusions you are drawing from what has happened in the drug scene over the last ten years.

The mere fact that we had drug laws ten years ago which seemed to work well and now do not really cannot be blamed on the drug laws per se. A great many things have happened in the last 15 years. The entire drug culture, in a sense, was imported by a generation. I do not think we can say, as you said at one point, that the amount of permissive literature is the only reason that we have a drug problem today, or the extent to which we do have a drug problem today. I think marihuana today is a social habit, to some extent, in that kids try it because their friends try it, and I would suggest to you that more people try a joint of marihuana because their friends do it than because they have read some literature in a bookstore. Probably most of them have not been anywhere near a bookstore.

What we are really trying to get at is how to prevent this increase from continuing at the rate it has. My observation is that the suggestion you make for meeting this problem is not that far from that of the CMA. You use different terms. The CMA used the term "decriminalize" in their brief, and by that they simply meant that they did not want people accused of simple possession to suffer a jail term. You are recommending the same type of approach, and you are also recommending an approach of education with which, I think, we all agree.

My only reservation in that respect is that it might be difficult to order that type of education. As you already pointed out in your brief, in Canada alone we are talking, perhaps, of millions of marihuana cigarettes being smoked each year, and it would be almost impossible from a legal point of view to enforce that type of sanction.

Your idea about a separate act is an interesting one, setting it apart as not being either a therapeutic drug or a narcotic. My only reservation is whether you think we should treat cannabis any more seriously than LSD, THC, DNA or any other drug, or do you as a physician feel that these drugs are equally dangerous and should be treated by us in the same way?

Dr. McGeer: Some years ago, senator, I visited with Senator Perreault at the United Nations. I spent half my time with the Drug Enforcement Division of the United Nations, because at that time it was clear that this was going to be a very major problem in British Columbia. These people kind of laughed at us in Canada and they said, "No, one of the things you people will figure out in time is that heroin is not the biggest problem in drug abuse in the world; it is cannabis, and you people ought to be thinking right now about how to bring that problem under control." That was their opinion, based on what they had observed of the problems of drug abuse around the world.

I believe that cannabis is a very major problem. My appeal to you today is to see, when someone gives that joint of marihuana—which is going to be handed about by personal contact, someone either giving it or selling it to someone else—that he cannot give that joint away with the type of reassurance, medical and legal, with which he does today.

The Chairman: I don't think, Dr. McGeer, that you really answered Senator Neiman's question. She wanted to know whether you considered LSD less dangerous than cannabis, because LSD falls under the Food and Drugs Act and cannabis under the Narcotic Control Act. Am I right, Senator Neiman?

Senator Neiman: Yes.

Dr. McGeer: I thought I had answered it by telling you what people experienced all around the world, that they considered cannabis more dangerous than heroin. I am not sure that is true, but certainly yes, I would say it is more dangerous than LSD, because people are aware of the risks they take when they consume LSD.

Senator Neiman: Do you feel it causes more physical harm than LSD or speed, or any of the other drugs of that type? I am talking about physical damage. I cannot imagine that speed is less dangerous in terms—

Dr. McGeer: Speed is fast, and it is going to give people acute difficulties, perhaps leading to death in the very short period of time after they become users. LSD can, in a single session, so derange a person that they might think they can fly and go jump off the top of the Peace Tower. Cannabis will do neither of those things, but it is very evident that over a long period of time cannabis slips up on people and in the end leaves them pretty badly deteriorated. Because it is more readily used than other drugs, I would say that it is every bit as big a problem and, in my view, larger. Now, that might not be shared by an awful lot of people.

The Chairman: We will hear from Senator Godfrey and then Senator Choquette. You only have five minutes between you.

Senator Godfrey: That's a little harsh. The people before us had ten minutes apiece. I will be very quick.

I want to get back to the area in which you are an expert. The area which I am particularly interested in, and trying to get some guidance on, is: What evidence is there as to how much marihuana you have to use before it becomes dangerous? we read some papers that were given to us over the weekend which indicated a lot of experiments that were using very high dosages. We had evidence from the Canadian Medical Association that it had to be larger uses, and you in your paper refer at one point to four a week. We had one other witness who suggested that once a week might be dangerous. You yourself say—and I quote your brief: ... regular users (by that I mean once a week) will have their tissues continuously exposed to the drug with possible building up of levels over a period of time." Is there any evidence that as little as once a week will do damage in the long run?

Dr. McGeer: The only way you can judge that is by animal experiments where you give label THC, or in the case of humans where you give label THC. In the case of animals you can measure actual levels in tissues; in the case of humans you can measure the gradual excretion from the body, and you make judgment on the basis of these in a direct experiment.

Nobody wants to have their brain measured. You cannot measure the brain and have it too. That is why the kinds of critical experiments that can be done to answer precisely your question have not been done and are not likely to be done unless very sensitive analytical measures can be developed. We would not be able to tell how long a given dose persisted in the body. Since you do not have animals taking hashish continually, over a period of a year or so, you cannot measure the tissue level as you can with birds and DDT. The only kinds of experiments are chronological laboratory experiments that have suggested this would be the case, but they do not prove it.

Senator Godfrey: I gather from your answer that it is only speculation that as little as once a week might do some damage.

Dr. McGeer: No, that might lead to chronic building up, but we do not know what levels could be reached. We have no idea of that. All we know is that if you give a single dosage it is not cleared within a week.

Senator Godfrey: One last question. You say that the Canadian Medical Association could not give us the definition of a narcotic. You say that cannabis is not a food or a drug I am not quite clear why you say it is not a drug.

Dr. McGeer: In the therapeutic sense; there are no therapeutic uses for cannabis or its derivatives.

Senator Godfrey: A drug has to be something that will be of some benefit to you?

Dr. McGeer: I say not a "therapeutic" drug. You see, even narcotics are therapeutic drugs. Morphine was the best pain-reliever there was, and heroin was an agent without parallel for difficult childbirth. It is not used any more, but there were very good therapeutic uses for heroin. It used to be sold for anickel a pill in Vancouver as a

treatment for morphine addiction after the turn of the century.

Senator Godfrey: The definition is that it is something that is of therapeutic value?

Dr. McGeer: That is what I explained.

The Chairman: The final question, Senator Choquette.

Senator Choquette: I will try to be brief. I refer you to your brief, at the bottom of page 9 and the top of page 10, where you say "that heavy use may result in"—and you go on to list six points. Are you able to add a number seven to that and say that the chronic user of cannabis, in order to get further kicks after a while, will graduate to a harsher or harder drug? I thought that would be one item that you might have added, unless it would not be one of the results of heavy use. Are you in a position to say it leads to harder drugs?

Dr. McGeer: Senator, I would interpret personally the evidence that way. The evidence is there and people place different interpretations on the evidence. The six points I have mentioned are backed up by definite publications in literature. In other words, these refer to published papers, and they are all listed in this appendix. Whether or not cannabis use leads to heroin use depends on how you interpret the available statistics. There was quite an interesting study done sometime ago by the Toronto Narcotic Addiction Foundation, in which they listed the instance of drug use in an escalating scale. Of course, everybody will say that heroin is the drug of choice when it comes to the euphoric thrill, but most people consider heroin to be the most dangerous. You have the least risk legally and up until now, physiologically, from cannabis. Therefore, this is the safe entry.

I believe that marihuana is used more than any other drug for this reason; that is where the breakthrough comes. It seems to me there is a definite inflection rate from there as people progress from there to the next riskiest, to the next riskiest, to heroin. The percentage continues to drop. People have used the milder drugs almost universally, and that becomes the interpretation. I think you and I would interpret it the same, but others would disagree with us.

Senator Croll: That is the British experience, exactly as described by the doctor.

The Chairman: Thank you very much, Dr. McGeer. I wish to thank you on behalf of the committee.

Now, Mr. Richard Antony is Chairman and Executive Director of the Alberta Alcoholism and Drug Abuse Commission, a lawyer for quite a number of years, and he was crown prosecutor in Edmonton. Members of the committee have Mr. Anthony's submission before them.

Mr. Richard M. Anthony, Chairman, Alberta Alcoholism and Drug Abuse Commission: Honourable senators I am very pleased to have been given this opportunity to attend before you today to discuss with you my submission regarding the proposed legislation contained in Bill S-19. I come to this meeting with two concerns: one for the law; the other for the treatment of the user. I was prompted to come forward and make representations firstly on the area involving decriminalization of the law. In my brief, which is before you, I make mention of the fact that we must consider the law as it presently exists. There are only two methods by which we will effect controls or restrictions on those who have come before the judicial process. That is,

by civil order or by criminal restrictions placed through the operation of the Criminal Code.

The civil order, as I explain in my brief, is not a very functional alternative to what is in use today. Civil orders imposed by courts after legal hearings are not generally enforceable, are not satisfactory because there are no agents in the community to see to their enforcement. It is a cumbersome process to find a person in contempt of a civil order and bring him back before the court in order to seek enforcement of that order in relation to their conduct and behaviour. I might cite such examples as the failures we have experienced in the laws relating to the alimony payments by erring husbands and orders involving ceasing and desisting annoyances relating to persons within a family or outside a family situation, in which cases the courts have warned one to desist from attending at certain locations, properties and so on, and causing annoyance to other members of the family or, occasionally neighbours.

These orders are difficult to enforce and really require the respect of those who are recipients of them in the sense that they respect the laws and the courts which hand the orders down. There is a requirement, therefore, for a certain degree of compliance in order for civil orders to work.

My experience as a lawyer with the attorney general's department in the province of Alberta in enforcing such orders has been that it has caused hardship and concern and, frankly, in my opinion, it does not work very well.

Therefore, the only other alternative by which we can deal with the problem of regulating the behaviour of those involved is through the process of the criminal law. The Criminal Code provides us with two methods of prosecution: One, by way of indictment; the other, by way of summary conviction. Summary conviction offences are the same regardless of the location in Canada. There are summary conviction offences for federal statutes provided within the Criminal Code in Canada and provided by provincial statutes and municipal by-laws, all of which are summary conviction in nature. There is no difference between the offences as such. None of them bear criminal records in the sense that we speak of criminal records in the legal terminology. They all bear records, certainly, because every person who appears before a court has a record of conviction, a record, in fact, that the charge was presented before the court and that there was a finding pronounced by the court.

The document used, which is known as an information and charge sheet, is a record, in fact, which is never destroyed. It is always on file at the clerk's office at the court house where the charge was laid. However, that is not the criminal record with which some are so concerned. That is the record in which the fingerprints and photographs are retained on file at a computer centre in Ottawa. They can be retrieved and identified at some subsequent time as being the records of the perpetrator of an offence of which he was convicted.

That is not the case with a summary conviction, because the information on summary conviction is not stored in that centre in Ottawa. There are no fingerprints or photographs which are obtainable for summary conviction proceedings and retain evidence of such a conviction so that the conviction could be recorded and identified against a particular individual member of our society. The record of a summary conviction really says in fact that on a certain day in the city of Edmonton, in the province of Alberta, an individual by the name of John Brown appeared before the

court and was found guilty of an offence punishable on summary conviction. We never really know who John Brown is. In many cases John Brown is not his name. John Brown may have changed his name, but there is no way that any record can be produced that will identify John Brown as being that person for the purposes of the court. The only manner in which this could be done is by people who were present at the time John Brown was prosecuted and convicted coming forward and giving evidence to identify him as that person. Therefore, gentlemen, I am saying that the summary conviction proceedings do not result in a record of criminal conviction.

There are ambiguities about this section of our law and it certainly requires much clarification by the Government of Canada. However, within the pure terms of description summary conviction proceedings do not result in a record of criminal conviction.

I would prefer, therefore, to look at the summary conviction proceeding as the preferred way of proceeding with the charges as outlined in Bill S-19, rather than considering the decriminalization of them. I say this for the following reasons: That everything that we do contrary to the laws of our country, whether the law be a regulation of a municipality, of a provincial statute governing the operation of our motor vehicles, or a law passed by the federal Parliament dealing with a federal statute, such as the Statistics Canada, Income Tax, or any other of the federal statutes, could result in some cases in summary convictions.

The penalties are exactly the same, the maximum being established, for the most part, as six months imprisonment. The fine has been established as usually a maximum of \$1,000 and the combined penalty could be a fine of \$1,000 and imprisonment of six months combined as being the most extreme penalty that can be handed down under summary conviction proceedings.

However, summary conviction is the misdemeanour section of our law, as compared to the laws of the United States. It is not considered serious in comparison to the indictable laws relating to the more serious offences governing the behaviour of our citizens. If I allow my dog to go free without a leash and the pound man identifies me as being the owner of that dog I will be charged with a summary conviction offence. The penalty in my community bears a minimum fine of \$100, because there is a bit of a war on right now about dogs being loose without leashes. I would be required to attend court in pursuance of a summons which I received. If I did not respond to the summons I would be arrested and taken bodily before the justices. I may be asked to enter a plea to the charge, and I will be tried and maybe convicted. If I am convicted, the penalty imposed on me could be \$100 or, in default, 30 days imprisonment or more, depending on the discretion of the court.

If I can be fined and convicted summarily by that process for letting my puppy dog off his leash, I can assure you, gentlemen, that I do not share much concern for the problem involving the young drug offender as being a summary conviction party.

The whole aspect of our law is that, this is the only method at present known to us that we can control behaviour by way of enforcing our regulations and laws. If we consider it to be a lesser offence, we use summary conviction proceedings. If we consider it to be a serious offence, we use the provisions relating to indictable offence.

I rather like the move towards the lessening of the penalty for the drug user in this case, where they are first or second offenders. I think it gives them an opportunity to come through the court process, learn a good exercise in law, and not obtain a criminal record, and perhaps benefit from their experience without being tarnished for life.

But my submission, ladies and gentlemen, is really in the area of what do we do with the offender when he comes before the court. The basis of my submission deals with the fact that from the beginning, when the problem started to give rise to concerns in our community, we thought that the law was the answer to the problem and the prosecution was going to ensure compliance with our population, and that if we prosecuted them we would find compliance, that people, after having experience as accused persons, would go home, having learned their lesson, and would not repeat the offence.

However, in the case of drug users particularly, or people involved with alcohol, where there's an involvement of addiction or constant use or abuse, this simplified process just does not work in itself. It requires more than just charge, prosecution, conviction and sentence. It requires more of a process.

I am suggesting here that the process required is that the courts become more involved in programming of information, perhaps education, perhaps treatment if necessary and rehabilitation, and that we use the clientele, which we have identified in our community as having the problem, as the first starting off point to try to bring about change in the drug community by educating them, perhaps informing them at least, providing them with alternatives to drug use, assisting those who find they are willing to accept assistance, and rehabilitating those who accept rehabilitation as an alternative.

We have probably processed in the last 10 years over 10,000—I am estimating this—young people in Alberta for drug offences. Yet not once have we tried to do anything with them after having brought them through the courts. We have given them the magic kiss. We have said "Suspended sentence on condition that you go out and be of good character, that you do not associate with known criminals, and that you report to your probation officer, and do all sorts of other things;" and we have discharged our responsibility. At least, the courts assume that has been the case.

Of course, the reality of the situation is that there is no follow-up to the suspended sentence. The young offender leaves the courtroom followed by his bevy of followers who have been there to witness his martyrdom; they leave the hall laughing, go down to the nearest restaurant and light up a marihuana, and proceed on merrily as they have before—because they know that the system of suspended sentence and probation is a laugh. It does not provide the kind of control that the court believes it provides, and the recycling of this young offender through the courts happens quicker than one imagines, for the very next night perhaps he is back flying with the crows, shooting up or smoking, or whatever he is doing; he is picked up again, and he is back before the courts as a second offender. Perhaps this time he has enough on him to be charged with possession for the purpose of trafficking.

But in any event, we are recycling our young people through the court process without stopping to say "What value is it? Where is the sense in bringing people to justice when they simply go back and repeat the offence, ignoring the experience they have had?"

What I am saying, in fact, is that the court does not provide the kind of experience that these people need to assist them in finding how to rid themselves of their habit, their life style, their adherence to the use of drugs, and we have to look at the problem in light of the individual and his requirements.

Society's requirements are cared for when we prosecute him, and the fact that we have identified him in the community as being the offender, and he is being punished because he is not complying with their laws. The punishment is by virtue of the sentence imposed. But it leaves him left with the problem of how to comply with the law when he has not got the tools to do so.

Those people who find themselves in violation of our drug laws, I have found in my experience, are people who have had difficulties to begin with. They are people who have had problems in adjusting to a philosophy of life, a life style of their own, people who have had difficulties in facing up to the realities of the world in which we live, people who have had problems at home, who have been left, perhaps early in life, without direction or guidance, people who are easily led by others. Whatever the reason, they have fallen into the situation of drug use and someone has to give them a hand to get them out of it. The prosecution of the offender does not get him out of that rut. In some cases it makes him out to be a hero among the group he follows, because they feel that he has been martyred and now he is really in the club.

It is silly to think that way, but it is true. There is a conspiracy of silence among those who use drugs. That is why I laughed when I heard the comment previously about prosecution for trafficking in marihuana. The only way you will get a marihuana trafficker is if there is an under coverage and they are buying the stuff, because there is no way that any drug user will come forward in his right-mind and give evidence against his friend who is trafficking in marihuana. It has just never happened, unless the fellow does not value his future in the community. The fear, the subcultural pressure, in the drug community is so great that there is no way that you will get voluntary admissions from anyone as to who they bought the drug from. But, in my role as the chairman of the Alberta Alcoholic and Drug Abuse Commission, I am concerned about the fact that we have to start treating the problem. We have identified the problem through the efforts of our law enforcement agencies working with the laws that we have provided. The problem that we have identified, of course, are the people who have come before the courts, and seemingly we are throwing our hands up and saying, "I don't know what we can do. We will increase the penalty." This may work for some, but for most of those I have seen coming through the courts, the increased penalty might result in a period of incarceration because of their inability to pay the fine, but it will not result in their changing their life style. It will not result in their looking at their problem and projecting where they will be in five years from now.

What I am suggesting, therefore, is that we treat the problem of marihuana and hashish use, particularly involving the young offender, as a special problem, and we look at the law as it can be worked through legislation to provide the accommodating facility to give these people the education, experience, and opportunity, to look at themselves and at others, and to perhaps find alternates to their drug use before they become re-offenders in our courts.

Many people that I have seen have committed the offence of possession of marihuana as many as six times in a year, and are likely to continue to be brought before the courts only to be convicted again. But nothing has happened. The court does not like to send the young person to jail because jail is not a place of cure. It is a place of isolation. In many cases these people are very young—16 years old, 17. They are at a loss as to what to do. Our commission, therefore, anticipating that there would likely be a change in legislation, and anticipating the need for something more positive to occur, developed a concept of a drug education program. We were encouraged to do this because we had had some success in an impaired drivers' program which we started in Alberta in 1970. I will explain to you that program briefly and then tell you about the drug program.

We recognized that there was a need to educate our impaired drivers about the law, their responsibilities as citizens, and give them some background in which to prevent them (1) from repeating the offence and (2) hopefully give them assistance to find their way back into the community.

In my province all impaired drivers are suspended for a period of six months to a year, depending on whether it is the first offence, the second offence, or third offence. So, we sought to impose a program of education and exposure to the law and to the people involved in the enforcement of the law and to other people in the community concerned with the operation of motor vehicles by people under the influence of alcohol. The program itself involves four weekly sessions of two hours. Convicted impaired drivers are referred to the program by the court as part of their sentences. They are fined in accordance with the circumstances of the case, but in addition to the fine there is a suspended sentence imposed, one of the conditions of which is that they attend the course at a time to be fixed by the judge.

The program has been operating since 1970 and we have processed thus far over 4,000 impaired drivers. We are now expanding the program to operate in 23 communities of Alberta.

The program is being looked at by other provinces. British Columbia now has a similar program operating in four or five communities, and I understand that Ontario will be implementing a similar program. The Maritimes, too, are looking at it. I believe the province of New Brunswick has already started one, as has the province of Nova Scotia.

We have to come to the realization that impaired drivers are people who have problems. They have problems with alcohol, and people in that situation are not unlike those who take drugs, because alcohol, really, is just another type of drug. The problem is that they have developed a life style based on the use of alcohol, and that life style has got them into difficulty in the operation of their motor vehicles.

The young people we see coming before our courts involved in drug offences have developed life styles around the use of the drug they are using. Their whole style of recreation and association is based on the drug community. The alcoholic bases his style of operation around the beer parlors and night clubs that he frequents, but the problems are the same. That is why I draw the analogy between the program we have been operating now for four years and the need for a similar program for those people involved with drugs.

The problem has to be worked out in conjunction with a compulsory course. It cannot be left as an option, because impaired drivers would never be inclined to attend such a course were its not compulsory. There must be some way to get them to the first session. Once they get through the first session, we have difficulty keeping them away. In fact, they are bringing their wives and children to the program, which is causing us some concern because of overcrowding.

The attendance at such a course has to be made part of the sentence. In other words, if the individual concerned is given a reduced penalty, he must, in return, be required to attend the course. People have to start helping themselves a little bit before they can solve their problems.

What I have in mind are programs where we could have individuals skilled in the treatment of these problems, as well as the people from the enforcement and judiciary working with groups of 15 or 20 and discussing with these young people their responsibilities and their hang-ups with our laws. Only in this way can we get these things out into the open.

We have been running a pilot program since August. There were 268 drug offenders referred to the program by the courts, of which 167 actually attended. We have been very encouraged by the participation in this program. We are not too sure what sort of success it will be, but at least we are doing something. For ten years we sat around and did nothing, so at least we are being more productive than we have been in the past.

Of the 167 who attended the program, 18 of them stayed on voluntarily to receive more intensive treatment for their problems. These people are being treated on a continuous basis as out-patients at our Out-Patient Clinic where they can receive the benefit of counsel and even to receive, perhaps, medical attention.

We are certainly encouraged by this program, and my purpose in appearing before your committee today is to recommend that consideration be given to the introduction of legislation in conjunction with the bill you have before you which would make attendance at programs of this type part of the sentences to be meted out. I say this because the only provision in the Criminal Code under which this can be done is in respect of a suspended sentence or provision. However, the relevant sections are so encumbered by administrative red tape that the courts often do not feel inclined to invoke them. They involve the time of the staff of the court, as well as the judge and probation office. There is a great deal of red tape involved in placing a person on suspended sentence.

I think the process we are looking at is a special one, and I think that because we are looking at new legislation we could include in it a special provision which would make it much easier for our courts to refer people to programs such as the one I have outlined.

If the individual continues to commit the offence after attending such a program, then, in my view, we would have to go the other route in order to make him conform with our laws. I think that in the case of a first offender—and these are the people with which we are concerned and who make up the majority of the offenders coming before our courts in relation to drug offences—I think the answer lies in education, and that education can be forthcoming through a program such as I have outlined. The earlier you get the person involved in the drug scene, the more certain

the results will be. If you allow the person to go downhill to the point that he has lost his values with nothing to cling to, then the problem is a much tougher one. A young person who has been in the drug scene for five years has, no doubt, lost his educational opportunities, his willingness to work, his family relationships, and probably community relationships. When you start talking about rehabilitating such an individual, he has a long way to go before he gets back to where he started. It is far easier to take a young person who has not been in the drug scene for any length of time, provide him with the information he needs, and let him make a decision as to what he wants to do with his life.

The courts do not have the time to lecture these young people at the time of their appearance, and if they do receive a lecture in court, it is usually viewed as being domineering.

In my view, we should take the opportunity to provide these young people with educational programs. There is a strong suggestion that such programs should be made available to these people before they are made to answer to the charge. In other words, pre-trial programs. The individuals charged could then voluntarily attend such a program prior to being tried and their conduct while attending such programs go to their credit when they appear before the judge for sentencing. In cases where the individual seemingly is trying to find some sort of solution to his problem, the judge could take that into account and, perhaps, grant an absolute or conditional discharge. And this may be preferred, particularly in cases of first offenders. These programs of pre-trial treatment have been used in Alberta with impaired drivers who have shown us that they are at least second or third offenders. We have counselled them with their solicitors, have asked them to identify the problem of alcohol, and if they recognize that they have a problem we have given them the opportunity to attend a treatment clinic for a 28-day program. This program involves rehabilitation treatment, counselling, the full range.

We have had about 40 people through this program since we started. These are chronic alcoholics, by the way—every one of them, pretty well—and they are still people that have a place in the community. They have employment, they have friends, they have families, they have opportunity, and they are good people to work with because they have lots of things that count when you start talking about rehabilitation. We have put them into these treatment facilities, and they have come out in the figures in the reports that I have given you today.

It is a remarkable recovery that these people have made on their problems. Some have found ultimate sobriety, yet others have found alternate behaviour patterns which have not led them into conflict with the law, which was my prime concern when I was a prosecutor. Now, of course, I am involved in the treatment of addiction in the province of Alberta, and I am considering both sides—that is, the alcoholic and the drug user. However, I equate the two of them with the fact that they both have the same type of problem, and the approach has to be somewhat different.

I could say a lot more about what we have done, and the kinds of opportunities that give rise to the court programming, but I am sure most of you are tired. You have had a long day and have heard a lot of testimony.

My purpose in coming here today was to introduce to you the fact that such programming will work, in my

belief. It has been experimented with in Alberta, and we think it is the only answer, at least, as far as we can see.

An increased penalty for repeated offences is fine when we can identify the drug user as being that kind of person. If he is not going to learn, one way or another, then I suppose we have to treat him the way society wishes, and that is as a criminal; but in the cases where the person has early involvement with drugs, or where the person is not a trafficker, or where the person is a first or second offender, we should certainly start working with them in trying to help them find a solution to their problem.

I should mention that the program we offered in Alberta involved people charged with various offences, not just possession. We did not restrict it just to people who are using cannabis. We took people who are charged with other drug offences as well.

Cannabis is not one of the big, popular first offences in Alberta. It is, however, one of them. We have lots of other kids who are using other types of drugs under the Food and Drugs Act, and that is their first offence. We treat all drug users as first offenders in this program, and we are encouraged by this approach. We feel that it offers some solution to the problem, and I think that if it is not provided for by legislation, there is little likelihood that the courts are going to want to get involved in it.

Our experience with the courts has been such that they have left us with the opinion, for the most part, that their job is to impose punishment and sentence, and perhaps to order suspended sentences, but that is the extent of it. They do not wish to become involved in any pre-court programming because it encumbers their trial list. They do not particularly like this after-programming on suspended sentences because oftentimes, when the person fails to come to the program, we have to seek enforcement and bring him back to the courts as a violator of a suspended sentence; but there is a reluctance on the part of courts, and I do not know why. I have been around and visited a lot of judges in our province, and I find that about 50 per cent are very willing to become involved, and 50 per cent are not too interested in becoming involved. Yet they all recognize the fact that their job does not seem to produce results in most cases, because of the fact that there is little offered in the way of education. The court experience is not an education in some cases. We always seemed to think it was, but we find it is not.

I have nothing further to say. There are 18 pages of submission before you. I was not going to read it to you. I think you are all capable of reading it when you have time. I am hoping for any questions you may have.

The Chairman: I think I should begin by congratulating Mr. Anthony for giving this excellent presentation without a single reference to his notes. In consideration of that I am going to ask a senator to move that his brief be printed as an appendix to today's proceedings.

Senator McIlraith: I so move.

(See Appendix)

Senator Laird: Since the time is growing so short, Mr. Anthony, let me say that, speaking only for myself, I am very impressed with this proposition of yours about what amounts to compulsory education on the harmful effects of marihuana. As a matter of fact, I think it is such, actually, that the committee should consider it very seriously; but I am only going to ask you one question because of the shortness of time. My question is this:

Really, the root of this problem probably is the trafficker on a big scale, and I was a little bit discouraged to hear you say that there were great difficulties in regard to police action in that respect. I know you have had some background in that field, and therefore I respect your observations; but the police are very ingenious, and if perhaps an extraordinary effort could be made to try to apprehend and punish these commercial traffickers, do you not think that that would be getting right at the root of the problem?

Mr. Anthony: I would think so, in the sense that was mentioned earlier, that cannabis is a type of drug easily concealed and usually obtained from various sources. The control of heroin is different; heroin only comes from certain parts of the world. We have to know who is handling the international trade in heroin and tap off their sources. But marihuana can be grown in a plantation in Montana and you can bring it over the border. You can scatter it amongst the débris in the trunk of your car and it looks like grass, in the true sense of grass. It is difficult to pin down the source of supply.

In my experience, what happens is that it comes in and there is a delivery system that is so fast and so effective that it is highly unlikely that you get the principal trafficker with it in his possession for longer than 20 to 30 minutes, before he has distributed it totally throughout the community that he is supplying. It requires an awful lot of effort on the part of the law enforcement agencies to: (1) become aware that he is bringing a load in; (2) define or locate the site where the distribution is to take place; and (3) make the apprehension, because often times these people are nondescript. Most of them are not users; they do not even have records. Mostly they use their girl friends, believe it or not, as the conveyer of the drugs. These are girls who probably do not use it at all and have never been involved. We have had them before the court, and their plea is, "I did not know what I was carrying," and that is a pretty solid plea because she has no record. It is a tough area but you are right, in that the law enforcement effort could best be spent in trying to curtail the supply.

Senator Laird: Would it help the cause at all if in this committee, so far as this bill is concerned, we were to increase the penalty for trafficking?

Mr. Anthony: I do not really think so because the courts do not give the maximum, anyway—unless you are going to increase the minimum. The courts like to take it down the middle. Armed robbery is a serious offence; we have a lot of murders resulting from armed robbery, yet we have hardly ever seen an armed robber receive the maximum penalty. It is usually something less than the maximum, probably less than ten years. So when we talk of maximum penalties we are talking pie in the sky, we are five miles off from what the judge is thinking. If you are looking at increased minimums, then we are saying yes, we consider it a problem and we want it dealt with in that way. I am not that familiar with the trafficking charge of marihuana, because I have never actually acted as prosecutor in the case of traffic in marihuana. It was not a provincial matter. Senator Prowse, I think, at one time had a hand in it, when he was involved in the courts, but I believe the penalty is quite an adequate penalty now—except that the courts again are minimizing it, by trying to look at the lesser penalty rather than the maximum. To me a deterrent in law means severe penalty, likelihood of detection, apprehension and successful prosecution.

Senator Laird: The combination.

Mr. Anthony: You have to close the credibility gap between what the law provides for and the likelihood of the user being brought to justice. At the present time there is a vast chasm between the user and the likelihood of prosecution, because I suppose the strength of enforcement is weakened by the number of people trafficking, the enforcement field is limited in that there are only so many people working in the drug area, and therefore people can split around without being detected, because all of the effort is not directed towards that one particular field.

Senator Laird: Then it is fundamentally a matter of police work?

Mr. Anthony: It is a matter of priorities, which I think the Government of Canada has to establish.

Senator Neiman: Mr. Chairman, I too found this presentation extremely interesting and I am sure that Mr. Anthony knows that a lot of the suggestions he has made, and the programs he has, are very similar to ones that have been considered by the Law Reform Commission. I think they are excellent and I am glad to know that one of our jurisdictions is actually implementing them. I have a hang-up about figures to some extent and seeing how they really relate in a practical manner. Mr. Anthony, you mentioned that 10,000 young people were processed through your courts last year?

Mr. Anthony: No, no. I said, since we commenced prosecutions for this type of offence, which takes you back to 1966.

Senator Neiman: Now, are you talking about all types of drugs and not just marihuana?

Mr. Anthony: Not just marihuana.

Senator Neiman: What would you think would be the percentage of these prosecutions that went through the courts that relate to cannabis?

Mr. Anthony: About 30 per cent. But most of them that are found are in possession of other drugs as well.

Senator Neiman: How many people would you estimate are guilty of the present offence of using cannabis—that is simple possession—in Alberta today? What would be the figure?

Mr. Anthony: I could not even hazard a guess. So many people have done so, and I cannot believe some of the figures that they have offered, and I would rather not utter a figure myself. It is really a very difficult area to speculate in because most people who use it do not admit it even in a survey. We have tried surveying it but it is very difficult. Some who admit to it are boasting and others who do not admit to it are fearful, so you do not really know whether the guy is boasting or whether he is using it and is afraid to say so.

Senator Neiman: Would you think you are dealing with 25 per cent of possible users?

Mr. Anthony: I will tell you from my position as chairman of the Alcoholism and Drug Abuse Commission of Alberta that concerns are being expressed to me now by educators—that is, school people—and community people that we are in a poly-drug era, that they are using combinations of marihuana and beer or marihuana and alcohol, and this goes back to another mistake we made a few years

ago by reducing the age to allow drinking. Their concern is that there seemingly is a reduction in the use of marihuana because as it physically appeared in the high schools it is not as prevalent today. That is the only way they can gauge it. The prevalence of its use is not as apparent today as it was, say, three years ago, but the increased use of alcohol is becoming a major concern and the belief is that they are substituting to a great extent one for the other or combining the two, whichever it may be.

Senator Neiman: These people—and you have referred to some who have gone through the courts and been recycled six times in a period of a year—are they really the offenders in the multiple-use category? Are these what you would consider really serious drug cases, or are they only possession cases or are we talking principally of that category of trafficking?

Mr. Anthony: You are hitting right at the problem. We do not know what these people are; we do not know whether they are first-time users or second-time users or if this is the tenth year but the first time that they have been caught. We do not know anything about these people. Here we are trying to consider the problem and we really do not know anything about the people we are dealing with.

Senator Neiman: This is our difficulty too because this bill, as far as we are concerned, is supposed to be dealing only with cannabis and trying to put it into the other drugs that are being used under the Food and Drugs Act, so that constitutes a difficulty for us.

Mr. Anthony: There is very little known about them. We in the commission have not yet had access to them, except under this new program because the court has given these people to us. They do not come near us. We have clinics throughout Alberta for treatment of addiction, and this includes drugs, and they do not come into us because they consider they do not have any problem—at least, they do not claim to have any problem. The only time we have actually got them in to sit down and talk to us about this is when they were compelled to come by the courts. Now we are finding out something about them. We are sitting down in a friendly environment and we are talking to them about their use. There is no heat on them now because they are not threatened with prosecution and they are prepared to tell us a lot more about it than we ever knew before, and we are just now starting to find out a little about these people, their involvement with drugs, how they become involved with drugs and the extent of their problem. You cannot mass medicate this situation which we are looking at today, because each one has a different problem.

It is the same as the alcoholic problem. One treatment does not work for all alcoholics. The reasons for that are various, and the extent and intensity of the problem varies with the usage and combined usage.

We do not know that much about them yet so perhaps what I am saying is an echo of what the medical people said: Go slow. Be cautious. We do not know very much about these people, other than what we have had given to us by researchers who are taking small samplings from which they tell us that this is the true picture throughout. But we know from past experience in dealing with alcoholics, for example, that samplings do not hold true. We used to say that all alcoholics are the same. They are not. We know that now. We know that that was a misunderstanding right from the beginning. We now know about alcoholism.

I am saying that we cannot treat these people as a group. We have to look at them as individuals. I do not know whether the first offender is a major problem or a minor problem, but I am saying that if we have to make assumptions, then let us assume that they are just starting in the field. Let us assume that we can do something to help them at the first go-round. If we make that assumption, perhaps this is the kind of program that will help them. Perhaps not. It may be that the first offender will be a long time drug user and that this is simply the first time he has been caught, in which case the program is a completely different story for him.

Senator Neiman: Would you not feel, then, that this program could be implemented practically for the offence of simple possession? Or would you feel that it should start at one of the more serious levels? I am talking only in terms of quantity, the number of people who go through.

Mr. Anthony: You are talking about simple possession?

Senator Neiman: Will you get that many people who are charged merely with simple possession in your courts? Will there be that much volume?

Mr. Anthony: Yes, there is enough in volume.

Senator Neiman: In Alberta?

Mr. Anthony: Yes, 30 per cent. This year we did two thousand and some prosecutions for drug offences. If we had 30 per cent of them in programming we would be covering quite a few young people. And that is just in Edmonton. That does not include Calgary and Lethbridge and so on.

I do not know what the figures are for 1974, actually, because we have not received them yet, but the figure would be an accumulative one, I suspect. It is increasing, because the index of enforcement is on the increase. There are more police officers in the field.

People sometimes become confused and think that the drug problem is increasing because there are more people being prosecuted. But you must remember that the police are putting on more pressure, are increasing their enforcement activities and are catching more offenders. You cannot, therefore, say that the drug problem is going up merely because of the number of prosecutions. You have to look at the effort which is being put forth by the law enforcement agencies to bring these people to court.

Senator Neiman: My only reservation is whether this is in fact the numbers game again. It would seem that you are only catching and prosecuting a relatively small percentage. But there are many people who smoke marihuana today who would profit a great deal from this drug program. But it occurs to me that your program is leaning rather heavily on the people you do catch, although I would agree that at every other level it would be of extreme usefulness.

Mr. Anthony: Let me put it this way: if the legislation we are looking at today is changed the way we suggest, it will lead the way for changes in other legislation which could follow. I am prepared to suggest to you that marihuana is the principal drug being used in the community. I am agreeable to that suggestion. Not all users may be charged with marihuana offences, but I am prepared to say that a marihuana user is a person we could work with, we would like to work with and should work with, particularly if the user is just entering the field. I am talking about the young

offender, the offender between the ages of sixteen and eighteen or maybe even nineteen.

This argument about numbers was thrown at us by the courts when we started dealing with the impaired driving problem. The courts said to us, "Oh, well, we are not going to send you the first offenders. We will send you only the second offenders." I said, "Well, do you want the man to go out and kill somebody in your community before you send him to us for the program? He has indicated once that he cannot comply with the law and that he has a problem with alcohol such that he would commit a serious criminal act by driving his vehicle when impaired. Why wait for him to do it twice before bringing him to our program, which is intended to stop him from repeating."

That argument held with the court and we finally convinced them that they should send us first offenders and not just second offenders, because the idea is to stop the offender from repeating. They thought that anybody could commit a first offence. Well, it is possible that if you are a violator you may. However, the fact is that those who do commit offences should be dealt with at the time the problem arises. We should not have to await a second offence before bringing them into the treatment setting. They may not second offend for 18 months, which could be quite important in their life from the standpoint of treatment, education or anything else.

Senator Prowse: Is the conspiracy of silence part of the culture, or is it fear?

Mr. Anthony: I would say fear. My neighbour came to me last week with a problem of a boy living two blocks away and trafficking in marihuana to his son. He asked what he could do about it, and I told him to call the police and his son could inform them that he is the recipient of these drugs, which would stop the trafficking. He told me there was no way he would involve his son in such an action, nor would his son permit him to do this. I told him his only other solution was to go to the parents of the boy and tell them to stop this business. He gave a further excuse for not doing that, and I told him the only thing he could do would be to sell his house and move away. However, the father was supportive of the boy's silence. So if it is that strong in a community situation, there is nothing we can do by legislation to break this conspiracy of silence.

Senator Prowse: The only way in which to break it would be by a communal effort?

Mr. Anthony: Yes. In Alberta we are also going into the schools with a drug information series program, which will hopefully develop into something significant in the long range. However, my concern is that it is costly to carry on most education and here we have people who have been identified as having problems, so let us start with them and work it out.

Our commission has copied material from the Le Dain Report and has edited it in forms of documents which are helpful to the community. This one is entitled "The Parents' Guide on Drug Abuse." It assists parents in identifying drugs and helps them to approach the problem with their children. Another is entitled "Drug Abuse" and describes drugs which are commonly abused. This is an article entitled "A guide to Supervisors," which is an instructional pamphlet for those in supervisory positions in employment. This is a pamphlet on cocaine; there is one on methadone. Another article is entitled "Journey Beyond Trips" dealing with LSD. We have a public series of

pamphlets which we made up for our information series, which are given now to the community. These are pamphlets which contain a great deal of the information brought to light by the Le Dain Report and studies which have been carried out. I would make these available for the senators, and if anyone wishes to have copies of these pamphlets they can write to me and I will be only too pleased to send them.

Senator Prowse: I had the privilege of obtaining this beforehand and had an opportunity to read it through. I believe you say in it, with respect to pre-trial treatment, that you do not have a problem as far as the first offence is concerned. Now there is a second offence, with the automatic jail sentence. You, in other words, make a deal with that accused and he picks a pre-trial treatment and you forget to give the notice required by the Code?

Mr. Anthony: That is correct.

Senator Prowse: Has that worked satisfactorily?

Mr. Anthony: Yes, very satisfactorily. With a second-offence impaired driver we notify him of our intention to proceed by way of second offence, which means that if he is convicted he is liable to 14 days' imprisonment. We then advise him that we are prepared to receive him into treatment if he wishes to take it and if he successfully completes the treatment the crown will undertake to withdraw the notification of intention to proceed by way of second offence. This leaves it to the court to decide on the penalty if conviction at trial ensues, rather than requiring the court to impose the minimum of 14 days' imprisonment. It is subterfuge to a certain extent, perhaps, but it works. We must threaten these offenders with something they really do not want in order to get them into the treatment. However, the success we have enjoyed makes this work. The attorney general approves of it, because it is not a case of playing games with drinking drivers, but maybe saving their lives as well as those of others. If we can get them to change their drinking habits, we may perhaps save their lives.

Senator Godfrey: Did I hear you right, that in connection with summary conviction offences there is no record kept in Ottawa?

Mr. Anthony: That is right, sir.

Senator Godfrey: So the Criminal Records Act does not apply?

Mr. Anthony: That is right, sir.

Senator Buckwold: I am sorry to interject, but in this act, under section 52, a person is deemed to be charged with an indictable offence. I am sure Mr. Anthony is aware of this. His comments on the summary offences do not apply under this act.

Senator Godfrey: That is what I wanted to get clear. Thank you.

Mr. Anthony: That is done because there is no way that you are ever going to charge them with a second offence unless you can establish that he was ever convicted of the first.

Senator Buckwold: This has worried members of the committee, the fact that a criminal record, because of section 52, will be involved even for the most simple possession. Most of my questions are directed to you as a

former prosecutor. In your opinion, should we remove the increased fine for the second offence, or should the penalty be high enough that the courts would have discretion to have a lower penalty and then increase it as they come, and eliminate this business? You say they have given a suspended sentence, that magistrates are giving absolute discharge, to keep the records from becoming criminal records. This is a very serious part of the bill.

My second question you may answer at the same time. What about sending these kids to jail if they do not pay their fine? Do you think that should be eliminated, in view of the fact that most of the offenders are young? Is it fair to say, "If you have not got the \$100, you must go to jail for three months for the first offence"?

Mr. Anthony: Really, what we do not want is to send them to jail for their first offence. I am suggesting that you even waive the fine and put them on the program. The benefit of a fine is really no deterrent, because inevitably, if they are working, which is seldom, they may have the money, and if they are not working, their parents will dig up the money, which does not punish the child.

Senator Buckwold: I do not think you will ever substitute the program for some first offence, because of the almost physical difficulty of a country the size of Canada. What about the fellow living in a town which may be a long way from a centre where they can get legal action.

Mr. Anthony: It is funny that we can run a jail, that costs us \$85 a day to put these fellows in, if they do not pay their fine—

Senator Buckwold: I am looking at the problem practically.

The Chairman: Senator Buckwold, I have to tell you that Mr. Anthony has to catch a 6.15 plane. He is going by police car, and I do not want him to end up in jail.

Mr. Anthony: May I answer the question this way, sir: The first offence is an indication of a problem; that is all it is. The courts are always giving suspended sentences. It is just a fact. If they started imposing fines, they would be very small. They may make a \$35 fine, but they would give them time to pay rather than send them to jail. I am suggesting that if we are going to use the first offence as an experiment and an experience, for us and for them, let us treat it as such and say, "Fine, this is your one go for free. The next time, boom!" then we start talking about other penalties. But with a fine of \$100, it costs us about \$200 to collect it, for one thing, and if we give the guy in default jail terms for failing to pay his fine, it costs us about \$85 a day. Since these people are not resident in any treatment facility, we could run such a program for \$15 per man per day.

What I am saying to you is that if you look at this in the way I am suggesting, you will make the provinces look at it in a different light. The provinces are looking to a revision of the criminal justice system, so let's start with this. Let us isolate this as our biggest community problem. It is the cream of the crop of our young people who are falling victim to it.

Senator Quart: Mr. Chairman, perhaps Mr. Anthony would be good enough to provide each member of the committee with copies of these brochures.

Mr. Anthony: No problem, senator. I will forward them to the chairman.

The Chairman: Thank you, Mr. Anthony.

That concludes our hearing this afternoon. The committee will adjourn until Tuesday morning.

The committee adjourned.

APPENDIX

SUBMISSION TO THE STANDING
SENATE COMMITTEE ON LEGAL
AND CONSTITUTIONAL AFFAIRS

Submitted by:

R. M. Anthony
Chairman

Alberta Alcoholism and Drug Abuse Commission

5th March 1975

SUBMISSION TO THE STANDING
SENATE COMMITTEE ON LEGAL
AND CONSTITUTIONAL AFFAIRS

This submission is intending to deal with two areas relating to the drug abuse problems facing our communities today. The first area which I will make submission upon is that related to the Criminal Code and the role of the court in dealing with offenders charged under the existing narcotic control legislation for offences relating to possession, possession for the purpose of trafficking, and trafficking in marihuana and hashish. The second area which I will make representation upon is that dealing with the role of treatment and education as part of the criminal process in providing an opportunity to envoke change in conduct on the part of those offenders who are brought to the attention of the courts through the workings of our criminal justice system.

There are two ways in which our law attempts to affect controls over behavior and conduct of our citizens who fall subject to the jurisdiction of the courts for various reasons. The first is by virtue of the civil process, wherein courts are empowered under certain civil proceedings to grant orders restricting people from behavior in a certain way, or prohibiting them from having access to described properties and/or may require such persons to provide payment of monies as part of a recognized legal responsibility to support their family, or in some cases to make restitution to plaintiffs who have sustained loss through the action of the defendant. In any event, such civil orders relating

to conduct are cumbersome and for the most part ineffective in dealing with day-to-day conduct, as there is no authority granted by virtue of such orders to our law enforcement agencies to see to their enforcement, without first having the matter returned to the court under a contempt proceeding, which may result in authority being granted to the law enforcement agencies to take such a person into custody or to forcibly remove a person from a described property or location named in the order. Needless to say, the delays in carrying out such enforcement nullifies its effectiveness as a means of governing behavior on a day-to-day basis, and implies for the greater part that the parties subject to such orders will voluntarily respect the orders of the court, and will for the most part comply with those orders, having regard to the respect that they hold for the courts who have pronounced these orders in the original instance. Our experience in dealing with enforcement of civil orders leads us to conclude that where individuals affected by such orders show no respect to the courts or to the rule of law imposed by such court orders, that they are difficult, if not impossible to enforce, and are for the most part ineffective in attempting to control the conduct of such persons as it relates to other members of the community and property. Examples of such civil orders can be found in cases of separation, where the court has ordered one party to discontinue seeing another party or the children of the marriage, or the order requires one party to cease and desist in annoying or threatening the other party, and may further order that one party not attend at or attempt to gain entrance to a described property or geo-

graphical location for the purpose of carrying out threats, annoyances or attempting to gain access to children. Other examples of civil orders which fall under this system are those orders requiring the husband of the marriage to pay alimony to the wife to cover maintenance for herself and their dependents. These orders are mainly provincial in nature, and when one party moves from the jurisdiction of the court, it is necessary to seek enforcement in another jurisdiction through a renewed civil process which is costly and ineffective in some cases.

On the other hand, the criminal law provides that the court upon making a finding of guilt in relation to a party to an offence, can impose restrictions and conditions upon the granting of freedom to a person which is enforceable: a) by our law enforcement agencies, b) enforceable throughout the jurisdiction of Canada and goes well beyond the limited jurisdiction of the court having regard to the fact that the offence itself was under federal statute, and c) provides effective remedy for failure to comply with these conditions in that the person may be brought back to the jurisdiction of the court under arrest and dealt with by the court, regardless of where he may be located in the jurisdiction of Canada. From this comparison it therefore can be concluded that the only effective method presently known to our courts to deal with subsequent conduct and behavior of individuals who have been found at fault in a legal hearing, is by virtue of the process provided for under the Criminal Code of Canada. This is not to say, however, that a better system of control of

behavior could not be devised through a review of our laws, but until such revision occurs, we must base our decisions on that which exists at the present time. It is therefore respectfully submitted that when looking towards methods of altering behavior, one has to show preference to the provisions contained under the Criminal Code, as opposed to that provided by virtue of an order through civil process.

I have made these comparisons preparatory to my submission comments as a base upon which I can substantiate my further representations.

There have been several representations made to Parliament by various organizations as to the need to decriminalize the existing offences relating to the possession and use of marihuana and hashish. These representations are based on the fact that we are making criminals of our young people who find themselves in violation of these laws, and that far greater harm is done to the individual by virtue of the conviction than can come from the effects of using these drugs, regardless of the illegal status which they presently hold in our community. It is with these points in mind that I would make the following representations for your consideration at this time.

(A) The proposed legislation makes it an offence for a person to possess marihuana or hashish, punishable by Summary Conviction, which in fact means that the person can be brought before a court of competent criminal jurisdiction, and dealt with under our criminal justice system. This does not, however, mean

that the individual concerned will obtain a criminal record, any more than as a person who makes an illegal left turn while operating a motor vehicle is said to obtain a criminal record upon conviction of that offence, as they are both Summary Conviction offences, and in most jurisdictions would carry comparable penalties to that being proposed for possession of marihuana or hashish. Every provincial statute and every federal statute which provides for penalty for non-compliance results in a Summary Conviction proceeding which, as you know, is a quasi-criminal proceeding that gives jurisdiction to our criminal system to view the non-compliance, and to impose penalties for non-compliance, with the alternate provision that non-payment of the penalty could result in incarceration for the period of time set by the court, not to exceed a maximum of six months in most cases. From this comparison it may be said that the new legislation therefore is tending to treat first offences for possession of marihuana or hashish in the same manner as if the person committed a minor traffic violation or was found guilty of allowing his dog at large without a leash. It is therefore difficult for me to see any necessity at this time to consider the decriminalization of the offence, when one compares its seriousness to other offences which we all live under threat of in our daily lives as members of the community and as users of the highway. There may come a time in the revision of our laws when other processes are designed to handle these regulatory laws governing our behavior, but under the present system the only method available to us is that of Summary Conviction proceedings.

(B) Under Summary Conviction proceeding, as mentioned, the court has jurisdiction after conviction to deal with the individual in a way which may provide for either penalty with restrictions and in default imprisonment, or suspended sentence with restrictions, which could subsequently result in further action of the court in event of non-compliance. In any event, under these proceedings the court is given broad jurisdiction under the Criminal Code to set conditions and terms which would be supportive of a change in behavior on the part of the convicted person, such that it would require that person to substantially alter his conduct from that previously known to exist to a pattern more socially acceptable to the community, and one which is likely to keep the person from further involvement with our criminal laws in the future, and in this case the laws relating to the use of drugs. Following the intention of the proposed new legislation dealing with marihuana and hashish, it therefore permits that the court, upon conviction, may then deal with the individual in a way which is more likely to be productive, not only for the community which the court serves, but for the individual who will be the recipient of the court's restrictions and prohibitions.

(C) Under the criminal justice system, there is a third approach to the problem which has been used in the past and which can be quite effective with the cooperation of the courts, and that is one which involves the individual as an accused being offered a program of education and/or rehabilitation prior to trial, which could substantially alter the court's

attitude in sentencing after conviction and which may result in some benefit to the accused by consideration being given to him for his participation in such a program on a voluntary basis, before being asked to answer to the charge. In some cases the conduct of the accused prior to trial could result and has resulted in absolute discharges upon conviction where the court is satisfied that the accused person is truly desirous of helping himself to overcome his difficulties, and is not in need of post court restrictions such as those which may be imposed by suspended sentence and probation.

Programs for education and rehabilitation directly involving the participation of the courts are innovative to our country and have not been used in the past to any great extent, probably because of our belief that the criminal justice system provides a solution to the problem of dealing with deviate behavior contrary to our laws. This belief has, of course, been discredited by studies and evaluations of our criminal justice system, which tend to conclude that the system itself is not supportive of the desired result, unless more is done in aiding the accused to alter his attitude toward the law and his life-style which has lead him into conflict with the law. The time, therefore, has now come for the legislators to give consideration to the enactment of laws which will incorporate provisions that will permit an opportunity for change in an individual by affording him an opportunity to receive education and behavior modification programming, which could result in the desired change occurring after only one

encounter with the law. Recidivism amongst our criminal offenders is one of the greatest problems facing our society today, and at present there is no legislation contained within our criminal laws which specifically makes provision for programming that is likely to bring about these desired changes.

The Alberta Alcoholism and Drug Abuse Commission has been experimenting in the use of court programming to deal with persons suffering from addiction problems for the past five years. Most of our experience has been in the area of impaired drivers, and Alberta was the first Canadian province to adopt the Impaired Drivers' Program as part of our after-court programming for persons charged with impaired driving or driving in excess of .08 blood alcohol, wherein persons after conviction are required to attend as a condition of sentence, a four week course involving two hours per week, which provides them with information relating to our laws, advice with regard to insurance responsibilities upon reinstatement, assistance in finding out how they can best undergo to prepare for the return of driving privileges, information as to the problems of addiction and what alcoholism is as it relates to the individual, and ample opportunity for the participants to ask questions of those in charge of the series. In those instances where individuals charged with impaired driving have been noted as second, third, fourth or subsequent offenders for these offences under the Criminal Code, such individuals are singled out for pre-trial counselling with their solicitor, and are given an opportunity to attend at a treatment centre for alcoholism addiction

prior to their attending court. This involves a residential 28 day program in one of our two provincial institutions at a time suitable to the accused, to receive treatment for his alcohol problem. Most of the offenders singled out under this program recognize their need for treatment, and are agreeable to accept this program. If they successfully complete the program and appear as willing participants to the program directors, they are given consideration when they return to court to face their charge inasmuch as the Crown then seeks to remove the notification of second offence prosecution, thereby eliminating the compulsory gaol term aspect of the offence in event of their conviction, leaving it open to the court upon conviction to decide on the penalty, having regard to the attitude of the accused, his participation in the pre-trial program, and such other circumstances as may be brought to the court's attention. Thus far in Alberta we have processed 4,024 persons through the Impaired Drivers' Program after conviction (as at August 1974). Of those, 741 were referred for further treatment and counselling, and 874 were referred to the Alberta Safety Council for driver training programs, and 382 were referred to both. We have processed 43 persons through the pre-trial program of residential treatment. With very few exceptions the participants in the Impaired Drivers' Program have found the information provided beneficial, and in a good number of cases they have found sobriety, have learned more about their responsibilities under the law, and have acquired information as to what subsequent involvement in these offences could result by way of increased penalty in event that there was no future compliance

with the law in relation to these offences. I have available for you the facts and figures for these program, which would indicate to you the numbers of persons we have treated and the successes that we have enjoyed with these persons through follow-up studies which have been carried out by our Commission staff.

Any programs involving persons accused under our criminal justice system of offences where education and treatment may be part of the rehabilitation process requires the full cooperation of the courts to be effective. In Alberta these programs have been effective mainly in jurisdictions where the courts have realized that the process of charge, trial, conviction and penalty is not producing the results which are hoped for and that something further must be added to the education of the accused to bring about the desired change in attitude and conduct which is anticipated when we undertake to criminalize certain conduct by providing penalty and prosecution for non-compliance. I have found, however, that not all courts see themselves in the role of programmers, nor do they sympathize with the need to provide some educational and rehabilitative programming as part of the court's responsibility. Many judges seemingly feel that their responsibility ceases after conviction and penalty, and that anything which may happen to an accused after that period is the responsibility of the community, the Government or other agencies, who concern themselves with the rehabilitative program needs of these individuals. Such an intolerate attitude can no longer be accepted by our society if we are to effectively make use of the existing system of justice in helping the community identify

its problem citizens through enforcement and prosecution, for if there is no further concern shown by the justice system, i.e. the courts, for the rehabilitative program needs of certain classes of offenders, then the system of justice is ineffective in dealing with the problem, as recidivism is certain to follow in cases where addiction or behavioral tendencies have not been altered through treatment, rehabilitation and educational programming. The courts have a very important role to play in assisting the community in solving its problem with drug abusers, in that the courts must recognize the fact that prosecution and penalty in itself, although it may provide a deterrent for some, does not provide sufficient stimulant for others to change their conduct as it presently exists, which is likely to lead them back to the court for second and subsequent offences unless there is a more individual approach taken to the needs of these people, by providing them with close contact with educators, counsellors and other rehabilitation staff, who can work with these people to help them find a better life-style and alternate behavioral patterns, other than that involving the use of drugs or alcohol. It is therefore my submission to you at this time that the proposed legislation as contained in Bill be accepted for introduction into our criminal justice system, but that specific subsections be added to this proposed legislation which would make provision for the court to direct the individual into some form of after-court programming, which require that the accused be exposed to an educational and rehabilitative process that could result in a change in behavior, such that he is not likely

to recommit the offence, unless he has done so with conscious awareness of all aspects of the problem which he faces as a drug user. It is granted that we cannot require the court to compel such offenders to attend programs of this nature, but if the legislation make specific provision for such after-court programming by virtue of court order, then there is a higher degree of likelihood that the courts will make use of this section where such programming is made available through the involvement of the federal and provincial governmental agencies. The use of the probation order and suspended sentence provision under the Criminal Code can be utilized for such processes as it has in the past, however, this process is encumbered with a great deal of administrative involvement, which is not necessary in the case of after-court programming and specific provision calling for such programming to be included as part of the legislation, which would have the affect of streamlining the administrative workload, and would make the introduction of such programming more viable to the courts and the court administrators than the existing legislation as presently found under the imposition of suspended sentence and probation. It is also my specific submission that consideration be given to legislation which would permit pre-trial programming in cases of first or second offenders for possession of marihuana or hashish, such that they may, if they indicate a desire to do so, become involved in a pre-trial program of information, education and rehabilitation that would give the court a better indication as to the

character of the accused after trial and conviction, and could likely result in the accused being given the benefit of absolute discharge where the court feels the accused person is giving his best effort towards improving himself in relation to his use of restricted drugs. Once again, unless such provisions are specifically dealt with by legislation, it is unlikely that such pre-trial programming would be introduced in many jurisdictions, where the court does not see itself as a participant in providing a program of treatment and rehabilitation for such persons.

In anticipation of the proposed revision to the legislation dealing with marihuana and hashish, the Alberta Alcoholism and Drug Abuse Commission introduced a pilot post trial program of addiction counselling and rehabilitation for young offenders, through the cooperation of one or two provincial judges in Edmonton, wherein young offenders, after conviction for offences relating to possession of marihuana or hashish, were directed by the court as a condition of suspended sentence to attend a post-court educational rehabilitation program. (The outline of this program is available for filing with this Honourable Body and may be referred to if you have any questions relating to it.) The program was first introduced in August 1974, and from August until December there were 208 accused persons referred to the program, with 167 attending the program, of which 114 completed the program, 13 failed to attend because they left the jurisdiction of the City of Edmonton, 5 failed to attend due to employment or school, 10 failed to attend for other reasons, some of which involved

subsequent conviction and sentencing for other drug offences, and 13 were directed back to the court for non-compliance with the terms of their suspended sentence. Fifty-three partially completed the courses, and will be continuing on with subsequent courses as offered in the current year 1975. Of the 167 who attended the courses, 18 stayed on with the Commission for further counselling as out-patients, and 5 of these 18 are presently still attending at the Out-Patient Clinic in Edmonton for treatment of their problems relating to drug use. It is conceded that the offenders found in violation of our laws relating to drugs, and in particular marihuana and hashish, are difficult persons to deal with, not only from the standpoint of law enforcement, but also from the standpoint of their willingness to accept information and direction as to how to improve themselves in relation to their responsibilities as members of our community. However, those of us involved in the Commission are pleased with the attitudes that have been displayed thus far by those involved in the program in their willingness to accept information on the drugs hashish and marihuana, and their frankness in discussing their problems relating to its use, and in the attitudes they have displayed towards the law enforcement agencies who are participants in this program in a counselling role. This is the first time most of these young offenders have had an opportunity to meet law enforcement officers in a friendly environment, and some of the participants have been more than gratified to have had this opportunity, and to find out that the police officers

are also deeply interested in the accused as an individual.

This program is, as stated, a pilot project, in an attempt to define the content that should be introduced in a post-court program, and is at present undergoing evaluation from the standpoint of content and results. It is hoped that from this pilot program a formula may be developed which can be introduced province-wide within the next six months, which will result in over three thousand young offenders being presented with an opportunity to learn and discuss more about their problems relating to drugs and the law. However, as I have stated earlier, the success of this program and its future expansion will depend greatly upon the type of legislation which is being introduced by virtue of this amendment as contained in Bill , and therefore it is felt that if this program, and programs similar to it are to be introduced for the benefit of our young offenders, that provision should be made which would allow these programs to be imposed by the court as part of the sentence, without necessitating involvement of the existing provisions relating to suspended sentence and probation. It is respectfully submitted that this problem of drug use in our community is wide-spread and is uniquely different from other offences found in our criminal justice system, with exception of impaired driving, and as such it is worth singling out for unique legislation designed to serve the needs of society in reforming these individuals, and flexible enough to be acceptable to the recipients who would be required to attend such programming as a required condition imposed by the

court as part of the sentence. Such a program would be more beneficial if offered prior to trial, so that the results of the accused's participation could be made available to the court in event of conviction. However, at present I have no information as to the kind of successes that would be enjoyed with the pre-trial program, except that in our experience in dealing with the impaired driver, the pre-trial program seems to enjoy better results, probably because the individual attending is desirous of creating a favourable set of circumstances which the court could view in giving consideration in the imposing of penalty in event of conviction.

In summary, it is therefore respectfully submitted that the proposed legislation as contained in Bill be accepted for introduction into our criminal justice system, but that consideration be given for inclusion of specific provisions which would allow the courts to direct persons convicted under these sections into programs of education, treatment and rehabilitation; and further that provision also be included in this amended legislation which would allow pre-trial programming where individuals accused of offences under these sections could voluntarily participate in such pre-trial programming, the results of which might lead to subsequent absolute discharge, if the accused's pre-trial participation was viewed favourably by the court.

It is further submitted that there be no consideration given to decriminalizing offences relating to possession and possession for the purposes of trafficking marihuana and hashish

at the present time, until there has been a better method affected in our system of laws which would provide for the kind of controls which are necessary to bring about the desired behavioral changes required to prevent recidivism amongst these young offenders, and further to make provision for their compulsory attendance in some form of after-court programming which might lead to a change in their behavioral pattern, such that they may void themselves of subsequent involvement in the use of contraband drugs.

Thirdly, it is important to realize that the success of any programming as outlined is dependent upon the court's willingness to participate, and that their willingness is dependent upon the attitude shown by our legislators, and the tools provided to the court in undertaking to impose conditions which are likely to lead these offenders into a programming situation.

It is further submitted that society is demanding something be done to attempt to bring about change with regard to the current situation relating to drug abuse, and numerous pressure groups have tried to involve provincial governments to enter into massive treatment and prevention programming to immerse the total population with information that is intended to prevent drug abuse or to deter those that are presently abusing drugs from future involvement, however, it would appear that we are ignoring the most obvious source to commence any form of treatment and education programming, and that is those persons who we have already identified as having a problem. In that regard I am

referring to those members of our community who have been charged with this offence, and who have shown by virtue of their involvement with the law that they seemingly cannot control their use of the drugs, to the point where they have either been convicted as a drug user or suspected drug trafficker. It is virtually impossible with the funds presently available to undertake any form of major educational program involving our entire community, and therefore it is submitted that if we are to make some headway with the problem, we should concentrate our efforts on those about whom we have knowledge - that being the drug offenders who have been charged or convicted before the courts because of their problem. If in the future funds are made available for broader educational programs dealing with drugs, drug use and drug education, then we can develop our programs for the community at large, but at present it is submitted that the main concentration of effort should be on those we have already identified as having a problem, but for whom we have done nothing at present in assisting them to overcome their problem.

THE ALBERTA IMPAIRED DRIVERS PROGRAM
CUMULATIVE STATISTICS FROM THE YEAR
1970 TO THE YEAR ENDING 1974

A.I.D.P. STATISTICS TO DATE (Aug.21/74)

LOCATION:		REFERRALS					
		Course No.	No. Comp.	AADAC	A.S.C.	BOTH	NO PROB.
Edmonton	(all totals accum.)	56	2477	434	577	285	1181
Wetaskiwin		4	49	11	7	8	23
Vermilion		3	40	10	13	4	13
Wainwright		1	16	0	6	2	8
St. Paul		2	31	8	7	5	11
Bonnyville		1	15	3	0	6	6
Ft. McMurray		1	19	1	7	4	7
Red Deer		2	24	5	9	2	8
Stettler		3	44	4	10	3	27
Castor		1	8	1	2		5
Calgary		27	520	143	159	46	172
Drumheller		3	47	15	6	2	24
Brooks		8	85	40	31	5	9
Medicine Hat		10	162	66	40	10	48
Lethbridge)	21	411	-	-	-	-
Standoff) referrals not	6	68	-	-	-	-
Pincher Creek) accounted for	2	8	-	-	-	-
			4024	741	874	382	1542

THE COURT - DRUG EDUCATION PROGRAM

COURSE OUTLINE AND STATISTICAL DATA

=1974=

DRUG EDUCATION PROGRAMConcerns:

The courts have been concerned about the increasing number of people complicating their lives by incurring a simple possession charge. To fine the drug offender and put him on probation did not seem enough. It became evident the drug offender needed education. This assumption was verified during the 3 months' operation of the Drug Education Course.

The drug offenders deserve an opportunity to obtain quality information on drugs, especially how drugs affect the lives of people.

The shock of going to court for some is a time of reflection and decision. It was considered that since this is true, a drug education program would be opportune as part of a Probation Order.

Objectives:

When the Alberta Alcoholism & Drug Abuse Commission was asked to design a course, it became necessary to decide on objectives. Informational objectives were finally considered to be the most appropriate. The most common factors to be observed about most of the drug offenders were their lack of knowledge about drugs, about drug laws, about dependency and about alternatives

to drugs. The course, then, was designed to provide the participants with knowledge in these areas. With the new instrument of quality knowledge, it is hoped the drug offender will be able to make an effective assessment and decisions about his drug taking behavior.

Target Group:

The people picked up on a simple possession charge are normally very young (between 18 and 20). The group composition, however, will always be determined by those apprehended by the police.

Content of the Course:

The first lecture concerns itself with the properties of the drug, physical and mind altering, the effect it has on the person, physical and psychological, and the dangers, if any. This lecture is conducted by someone competent in counselling and pharmacology. The presentation is to be as non-technical as the subject matter will allow. The evening is concluded with a film: "I'm Dependent, Your Addicted", (B.B.C.).

The second evening concerns itself with the law. A policeman, crown prosecutor and probation officer are in attendance to explain their role in the administration of the law. They also explain the position of the law and the rights of the individual when in conflict with the law. This evening is, by and large, run by the students as they ask questions and make comments which flow from their own personal experience of the law.

The third evening is concerned with steps to dependency. Early warning signs of dependency are clearly explained. For those experimenting with drugs, this lecture will give practical guidelines as to when the drug is becoming dangerous. Also, almost everyone in our society comes in contact with a drug dependent person and it is hoped that the course participants will be able to recognize dependency for what it is. They are shown a film ("99 Bottles of Beer") in which young people who have become

dependent talk about their dependency problems.

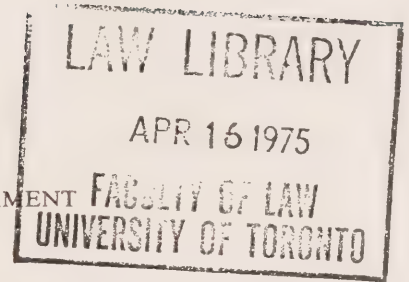
The fourth evening explains alternatives to drugs. The alternatives suggested are related to the reasons why people take drugs. The second part of the evening, young people who have been dependent on a drug and have been abstinent for approximately 2 years speak to the course participants. The message of these talks is dependency problems can happen to anyone and dependency is treatable.

COURT DRUG PROGRAM-- STATISTICS AUGUST TO DECEMBER 1974

COURSE NUMBER	REFERRALS	NUMBER COMPLETING	PARTIALLY COMPLETING	MOVED AWAY	WORK/SCHOOL	OTHER REASONS	FUTHER COUNSELLING
# 1 8/15/4	12	8	0	2	0	0	2
# 2 9/5/4	22	15	1	1	1	2	0
# 3 9/3/4	18	12	2	2	0	0	2
# 4 10/1/4	38	25	7	1	2	0	0
# 5 10/3/4	43	25	10	3	0	2	9
# 6 10/29/4	16	8	7	0	1	0	7
# 7 10/31/4	10	5	2	2	0	1	3
# 8 11/21/4	21	6	10	1	0	3	0
# 9 11/26/4	12	4	5	1	0	2	0
# 10 11/28/4	16	5	9	0	1	0	0
TOTALS	208	114	53	13	5	10	23



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75



THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 13

TUESDAY, MARCH 11, 1975

Eight Proceedings on Bill C-19, intituled:

**“An Act to amend the Food and Drugs Act,
the Narcotic Control Act and the Criminal Code”**

(Witnesses: See Minutes of Proceedi

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., That the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The Question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate

Minutes of Proceedings

Tuesday, March 11, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:00 a.m.

Present: The Honourable Senator Goldenberg (Chairman), Croll, Fergusson, Godfrey, Laird, Langlois, McGrand, McIlraith, Neiman, Prowse and Quart. (11)

Present but not of the Committee: The Honourable Senators Heath and Sullivan.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee continued its examination of Bill S-19 intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

Dr. Thomas E. Bryant, President of the Drug Abuse Council, Washington, D.C., was heard by the Committee.

At 12:35 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, March 11, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 11 a.m. to give further consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: The witness this morning is Dr. Thomas E. Bryant, President, Drug Abuse Council, Washington, D.C. I will ask Dr. Bryant to begin by setting out briefly his qualifications for the information of the committee.

Dr. Thomas E. Bryant, President, Drug Abuse Council, Washington, D.C.: Thank you, Mr. Chairman. It is a great honour and a pleasure to be here, and I hope I can be of some assistance to your committee. I am a physician and a lawyer, or, at least, I have degrees and training in both. I am the president of the Drug Abuse Council, which is a private foundation-like organization in the United States. We are located in Washington, but we have projects, offices and contacts all over the country. Indeed, we have a small international arm.

The council was created in 1972 following a two year study undertaken by, primarily, the Ford Foundation, when a group of foundations were attempting to make sense of and to rationalize an appropriate role for charitable foundations in the United States in this whole area of the non-medical use of psychoactive drugs in the United States.

I come not as a lifelong scholar of various psychopharmacologic aspects of drug abuse and misuse, not as an experienced research scientist, nor as a wise student of the workings of the law. Rather, I come as the president of a private organization created for the specific purpose of studying the non-medical use of psychoactive drugs in American society. In addition, the council was created to develop and recommend workable public drug policies and programs to meet what we perceive as the somewhat peculiar drug-related problems we have in the United States and to work in the field of public education regarding drugs.

Today, I come to share with you the council's experiences and views regarding marihuana. I would not presume to do more than that. If time permits, I should like first to read a prepared statement, which is not too long, following which I will be happy to attempt to answer any questions members of the committee might have. For those of you who are not familiar with the Drug Abuse Council and its work, I think I have filled you in. At our offices in Washington and through our contractors and grantees throughout the country, we have undertaken several hundred individual projects aimed at clarifying drug issues on behalf of an often confused American public in order to contribute to the development of reasonable public discus-

sion of these complex issues, aiming toward the eventual development of sound, just and enforceable public drug policies.

At the council, we have looked hard at narcotic dependence; multiple drug use; alcohol abuse; drug education; different treatment approaches for those seriously harmed by drug misuse. We have studied various law enforcement approaches and we have looked carefully at the relationship between drugs and crime and at the interface between treatment and the criminal justice system. We have consulted history, experts, judges, psychiatrists, teachers, legislators, users, non-users, the young and the old. And, since the beginning, we have looked hard at marihuana, the drug that the National Commission on Marihuana and Drug Abuse, appointed by the President and Congress in 1971, aptly labelled *A Signal of Misunderstanding* in our current society.

Dr. Dana Farnsworth, the distinguished Harvard psychiatrist and vice-chairman of the national commission, referred recently to marihuana's reputation as "the deceptive weed." I agree. He said:

It has a nature so diverse as to make almost any statement about it a target for contradiction. Estimates of its effects are notoriously unreliable. Its ambiguous nature appears to invite strong opinions that attempt to evoke certainty where none exists. Policy makers tend to become victims of their own propaganda. When marihuana first started to become a social problem in this country, members of Congress were led to make definitive judgments quite unsupported by reliable evidence. Laws were passed, based on definitions known to be unscientific. Criticisms that now appear valid and scientific were rejected out of hand.

In fact, an astute social commentator has said the debate about marihuana probably arouses considerably stronger psychological reactions than does the ingestion of marihuana. For this reason, no so-called "expert," whatever his discipline, can credibly contend that he has no opinion on the pivotal questions of social and legal policy. Therefore, at the outset, I would like to provide the perspective from which I view the marihuana discussion, and to clarify for you my personal concerns.

I am not a marihuana smoker or user. I tried it on two occasions several years ago and have not used it since, primarily because I did not find it overly pleasant. Long ago, no doubt unwisely, I discovered another, legal, drug—alcohol—which serves my purposes when I want to relax.

Secondly, I believe the drug is not harmless to the individual user, particularly the heavy user. No psychoactive drug is entirely harmless, and most, when misused, can injure the user psychologically, if not physically. There are wide variations in this potential harm, ranging from the obvious dangers of acute intoxication to the more subtle, difficult to measure, potential injury to complex

body systems, with heavy, repetitive use over long periods of time. On the other hand, as I will expand upon later, I am quite dubious and skeptical about several of the more sensationalized reports of harm—the chromosome-genetic damage, the brain damage, the male hormone malfunctions. Many of these findings are classic examples of strong opinions attempting to evoke certainty where none exists.

Thirdly, I think the use of marihuana, particularly by adolescents, should be effectively discouraged. I further believe it can be.

But, lastly, in explaining my personal views, I believe firmly that our current public policies toward marihuana are counterproductive, and causing needless, deep disruption in American society. I think more rational policies and laws are not impossible to design and would not be difficult to implement.

Of utmost concern in this regard is my firm belief that serious injury is being dealt to the law as an American institution, as increasing numbers of our citizens question the wisdom of our current marihuana prohibition. As so many defiantly break the law, they reinforce doubts as to the capacity of our legal system to maintain the requisite order in our society. Such doubts form the seeds of social-political disenchantment, which cannot bode well for our collective future.

Equally as worrisome is the fact that for many marihuana has become the symbol of that disenchantment and that dissatisfaction within our society. As such, much, if not most, of the public discussion about marihuana has been polemical, visceral, and often irrational, when exactly the opposite would seem to be required.

From this perspective, we at the Drug Abuse Council applauded the publication of the First Report of the National Commission on Marihuana and Drug Abuse, *Marihuana: A Signal of Misunderstanding*, issued in March, 1972. To us, that report represented a milestone in tempering the public dialogue concerning marihuana by stripping it of the fear and panic which had previously clouded the search for a reasonable national response.

I would like to share briefly with you my impression of the importance of the national commission itself, and to sketch some of its principal findings and recommendations.

I believe that the commission in its two reports has set forth the most comprehensive critique of drug practices and policies ever issued in the United States. And after two years of exhaustive study and analysis, the commission itself, with all of its variety of background and outlook, achieved a consensus on a wide range of critical drug issues and gave what I think is good, sound guidance. I found myself in substantial agreement with the analyses and recommendations of both reports when I first read them, and I find myself with that same agreement today.

It was a distinguished commission headed by the Honorable Raymond Shafer, former Governor of Pennsylvania, and containing respected and thoughtful medical, academic, law enforcement and congressional members. The commission's first report recommended that possession of marihuana for personal use no longer be a criminal offence, and that casual distribution of small amounts of marihuana for no remuneration, or insignificant remuneration not involving profit, no longer be a criminal offence. Those who have studied the first report, unfortunately still

few in number, know that it was a responsible one, based on extensive investigation and analysis.

I had hoped that the commission's first report would set the tone for a dispassionate look at what was going on in the States regarding our response to marihuana, and indeed there are some encouraging signs. All fifty states and the District of Columbia have already reduced from a felony to a misdemeanor the first offence marihuana possession. The State of Oregon has abolished criminal penalties for possession of one ounce of marihuana or less, and has instituted a system of civil fines.

The Oregon model is similar to the approach recommended by the national commission. It is an official policy of discouragement of use by the imposition of a civil sanction, and the elimination of criminal penalties for simple possession and use. Criminal sanctions are retained in Oregon, however, for possession of over one ounce, for selling and for cultivation.

It is instructive to look at the Oregon experience. The Drug Abuse Council commissioned a survey in Oregon during October of 1974, which was the first anniversary of their new legislation, to assess what changes, if any, have occurred in marihuana usage during that year, and to find out what impressions Oregonians have of their new law.

The survey was conducted by Bardsley and Haslacher, Inc., of Portland, Oregon, a highly expected marketing research firm, and consisted of several questions asked as part of a longer, regularly scheduled survey of public opinion on a variety of issues. The sample consisted of 802 personal, face-to-face interviews with adults 18 years or over. The firm used standard sampling methods, and, like all surveys which do not question everyone, the results are subject to certain specified ranges of variation. Similar data on marihuana usage in Oregon and attitudes toward the various legal alternatives is not available for the period prior to the passage of the decriminalization legislation. The survey data must be therefore viewed as entirely retrospective.

On the question of marihuana usage, our survey revealed that almost two out of every ten Oregon adults report at least having tried marihuana, with one of every ten reporting that they are current users. A sharp difference in marihuana usage is observed between younger adults and older adults: 46 per cent of adults age 18 through 29 have used marihuana at least once, while only 4 per cent of adults age 45 through 49 have ever used marihuana. These figures parallel those of other surveys, both national and state, which indicate that by far the heaviest concentration of those who either tried or continue to use marihuana are those individuals in our society 40 or under. With the passage of years, of course, the percentage of users in older age groups increases as marihuana users grow older.

MARIJUANA USAGE IN OREGON

	Have ever used	Currently use
	%	%
Total adults	19	9
By age		
18-29	46	24
30-44	15	5
45-59	4	0
60 & over	2	0

It appears that the number of individuals using marihuana has not significantly increased in Oregon since that state removed its criminal penalties for simple possession of one ounce or less. Of those individuals currently using marihuana, only 6 per cent report that they have begun within the last year, since the law has been in effect, while 91 per cent have used more than one year. All of the new users are between 19 and 29 years of age.

Four of every ten current users of marihuana report that their usage has decreased during the last year, one of every twenty report an increase in usage during the year, and slightly more than half report no change in usage. Certainly no one would claim that removing criminal penalties for simple possession of marihuana causes a decrease in consumption, but it is interesting nonetheless that the fears of some that marihuana usage would dramatically increase in Oregon if criminal penalties were removed are not borne out by our survey.

CHANGE IN MARIJUANA USAGE

	Current users
	%
Decreased usage	40
Increased usage	5
No change	52

The survey asked current non-users of marihuana to choose the most important reason why they do not currently use. Lack of interest and possible health dangers are by far the most important reasons chosen for not using marihuana by those who have either never used it or those who have stopped using it: 53 per cent said they were not interested in the drug, 23 per cent cited possible health dangers. The possibility of legal prosecution and the lack of marihuana availability rank low as reasons for not currently using: 4 per cent gave as their reason legal prosecution, and only 2 per cent gave as their reason lack of availability.

REASON FOR NOT CURRENTLY USING MARIJUANA

	Current non-users
	%
Not interested	53
Health danger	23
Possibility of legal prosecution	4
Not available	2
Other reasons	9
Undecided	9

A majority (58 per cent) of the State of Oregon residents favor the elimination of criminal penalties for the possession of small amounts of marihuana. Three out of every ten Oregon adults approve of their state law that makes simple possession of one ounce or less of marihuana a civil "offence"—akin to a parking violation—carrying a fine but no jail term or criminal record. An additional 26 per cent favor changes making sale and/or possession of small amounts of marihuana legal. Thirty-nine per cent of respondents say that they favor stiffer penalties for possession of small amounts.

As might be expected, young adults—ages 18 through 29—took a more liberal view on the four legal choices

regarding sale and/or possession of small amounts of marihuana. The division is sharp between those who either have used or currently use marihuana and those who have never used marihuana.

ATTITUDE TOWARD MARIHUANA LAW

	Civil penalties, as is	Possession of small amounts legal	Sale and possession of small amounts legal	Stiffer penalties
<u>Total adults</u>	<u>32</u>	<u>15</u>	<u>11</u>	<u>39</u>
<u>By age</u>				
18-29	36	26	17	19
30-44	38	13	8	40
45-59	25	13	7	51
60 & over	27	5	9	53
<u>By usage</u>				
Have used	26	37	29	7
Currently use	14	53	33	0
Never used	33	11	6	46

In summary, the Oregon survey seems to indicate that the number of individuals using marihuana has not significantly increased in Oregon in the year since its decriminalization law went into effect. And of those using marihuana, a large percentage report a decrease in consumption, while only a small number report an increase in use. Lack of interest or health concerns seem to be the primary reasons for either non-use or cessation of use, while lack of availability or fear of legal sanctions seem to be peripheral concerns. While a majority of Oregon residents favor the elimination of criminal penalties for the simple possession of small amounts of marihuana, a significantly large minority favor the imposition of stiffer penalties.

A marihuana use and attitude survey in the State of California was just completed by the council in February. It was commissioned with Field Research Corporation of San Francisco, and consisted of 1,004 personal in-home interviews, a representative sample of the California population. The results show that almost three out of every ten California adults have tried marihuana at least once. A sharp difference in marihuana usage is observed between younger adults and older adults and between men and women.

MARIHUANA USAGE—CALIFORNIA

	Have used	Currently use
	%	%
<u>Total adults</u>	<u>28</u>	<u>9</u>
<u>By age</u>		
18-29	54	24
30-39	35	5
40-49	10	1
50-59	6	—
60 & over	6	1
<u>By sex</u>		
Male	34	13
Female	21	6

In spite of the fact that California has among the harshest penalties for both the sale and possession of marihuana among the states, the possibility of legal prosecution and

the lack of marihuana availability rank low as reasons given for not using marihuana by those who have either never used it or those who have stopped using it: legal prosecution is named by only 8 per cent in California and lack of availability by only 4 per cent. Lack of interest is cited by 50 per cent of non-users as the reason for not currently using marihuana and possible potential health dangers is named by 38 per cent.

A relatively high level of marihuana experimentation among California adults, cutting across all demographic lines, coupled with the fact that non-users do not perceive either the criminal law or marihuana availability as critical reasons for abstaining, would seem to indicate that the use of punitive criminal sanctions to control marihuana usage is in fact not effective in California.

On the national level, marihuana use cuts across all demographic lines and appears to be steadily increasing. The National Commission reported to the public that, as of 1971, 24 million Americans had tried marihuana, with 8 million of them using it regularly—all illegally.

The Drug Abuse Council has made two major efforts to bring the findings of the national commission up to date. A major 18-month study of high school and college drug use being undertaken for us by Daniel Yankelovich Public Opinion Inc. should be completed soon. A national survey of both adults and teenagers was commissioned by the council with Opinion Research Corporation of Princeton, New Jersey.

The preliminary findings of the Yankelovich survey show that among those high school and college students surveyed during May 1974, most current marihuana users fall into the category the national commission called "moderate". Among the same student population more than twice as many drink alcohol as currently use marihuana and almost as many drink to get "drunk" on occasion as use marihuana.

TEENAGE MARIHUANA AND ALCOHOL USE

	Marihuana users	Alcohol users	Drink to get drunk
	%	%	%
High School	25	58	23
College	38	80	42

The council's national survey of both adults and teenagers with Opinion Research Corporation was conducted in October 1974. In that survey a nationwide cross section of 2,133 adults and 505 teenagers were asked about their marihuana usage and their attitudes toward our marihuana laws.

The survey indicates that 29 million Americans have tried marihuana, with over 12 million of them using it regularly. Among adult Americans, age 18 and over, 18 per cent report having at least tried marihuana, with 8 per cent of them reporting current usage of marihuana. Among teenagers, age 12-17, 14 per cent say that they have tried marihuana and 5 per cent say that they are current users.

As with the Oregon survey, the difference in adult usage divides sharply among age groupings, with almost one-half of those 18-25 reporting that they have ever tried marihuana, while only 3 per cent of those over age 50 reporting that they have ever tried it. Significant variations in marihuana usage are shown according to city size and according to

regions of the United States. In the Western states, 27 per cent of adults say that they have ever used marihuana, with 10 per cent of them reporting current usage, the highest statistics in the country.

ADULT MARIHUANA USAGE

	Have ever used	Currently use
	%	%
<u>Total adults</u>	<u>18</u>	<u>8</u>
<u>By region</u>		
Northeast	22	10
North Central	13	6
South	14	6
West	27	10

The adult public is about evenly divided between reducing criminal penalties and imposing stiffer penalties. Of all adults, 39 per cent favor the elimination of criminal penalties for the sale and/or possession of small amounts of marihuana and use in private, while 40 per cent believe that the marihuana laws should be made tougher than they now are for possession of small amounts. Only 13 per cent favor retention of the present laws and 8 per cent have no opinion.

Again, significant regional variations are shown in the public's attitude toward the various legal alternatives. Of adults in the Western states, 51 per cent favor the elimination of criminal penalties for the sale and/or possession of small amounts of marihuana, 31 per cent believe that the laws should be made tougher, 12 per cent favor retention of the present laws and 6 per cent express no opinion.

ATTITUDE TOWARD MARIHUANA LAWS

	Law remain as is	Posses- sion of small amounts subject to a civil fine	Posses- sion of small amounts legal	Sale and posses- sion of small amounts legal	Tougher penalties
	%	%	%	%	%
<u>Total adults</u>	<u>13</u>	<u>10</u>	<u>13</u>	<u>16</u>	<u>40</u>
<u>By region</u>					
Northeast	11	12	16	17	34
North Central	12	10	13	14	45
South	15	9	9	13	46
West	12	12	17	22	31

It seems clear that marihuana has been established as the recreational drug of choice by many Americans, youth as well as adults, and that its prohibition has had little effect upon either its availability or upon its use. Although the public remains divided on what should be the proper

response, I believe that it is moving in the direction of removing the requirement for criminal sanctions for the simple possession of small amounts of marihuana for private use.

Decriminalization of simple possession of marihuana has been endorsed by respected national groups in the two years since the national commission's report. Among them are the National Council of Churches, the American Public Health Association, the American Bar Association, the National Education Association. The state and local groups endorsing decriminalization range from the State of Vermont Bar drug law reform committee which went even further calling for legalization, with tight controls to the law, and the legislation committee of the New Jersey Narcotics Officer's Association which called for decriminalization while stressing at the same time that they were "absolutely and unalterably" opposed to the use of marihuana. Governor Hugh Carey of New York is considering decriminalization and has two of his commissions assessing such an approach for that state.

Some of the recent reports of the effects of marihuana have been exaggerated and misleading on both ends of the spectrum. Science itself is becoming a weapon in a battle between conflicting values and lifestyles and many of the scientists are taking off their hats to become protagonists and antagonists in the battle. The Drug Abuse Council sponsored a conference in Washington in January of this year designed to comprehensively review the major marihuana studies reported since the national commission issued its final report in March of 1973. The participants were distinguished scientists from the fields of immunology, cyto-genetics, endocrinology, psychiatry and neurology.

A majority of the scientists assembled had not in the past undertaken basic research into the properties or effects of marihuana use and had not published on those topics. In fact, they were asked to participate primarily for that reason, in order that the conference might be as objective as possible, with a minimum of preconceived, publicly announced points of view, particularly of an anti- or pro-marihuana nature.

There was consensus at the scientific sessions on several points.

1. The state of knowledge in many of these fields, e.g. genetics and immunology, is quite limited, as is the state of technology for measuring changes within each of these fields. Simply stated, it is difficult to know with any degree of certainty what reported findings really mean, because we have such huge gaps in our understanding of how the more sophisticated body systems work and how to measure meaningful changes in those systems.

2. There was a considerable degree of caution urged in extrapolating laboratory animal, test-tube type findings to the more relevant stage of findings exhibited in the behaviour or well-being of humans.

3. There was a concerted call among the scientists for more research of a prospective nature and a plea for less retrospective research, with the realization that such prospective research will take years to accomplish.

4. There was agreement that, while many of the reported findings deserved further study, none of the recent widely publicized reports warranted undue alarm or panic on the part of the public or on the part of policy makers. This is to say that there were sufficient questions about technique or clinical applicability, compiled with a general wariness among scientists towards over-interpreting isolated find-

ings, to caution against public over-reaction prior to the completion of further prospective research. In brief, the message was clear that, on careful review, there were no new startling findings about marihuana which dictate immediate changes in public policy.

What I would suggest is that we cannot afford to wait until all of the medical evidence is in concerning the effects of cannabis in determining an appropriate social policy. Few responsible scientists question that marihuana can be harmful to the individual, especially taken in high dosages over an extended period of time. This is true of almost any psychoactive substance we put into our body.

We who are involved in the drug abuse field have perhaps been too timid. We scientists have sought to avoid our responsibility to suggest reasonable and rational approaches to the use of marihuana, waiting for positive proof of health hazard to bolster society's preconceived notions. I believe this is unwise.

We possess already much scientific proof concerning many other drugs, but our approach to their control differs vastly.

We all recognize that by all statistical measures alcohol is by far and away America's number one public health drug problem in terms of wrecked lives, violence, traffic fatalities, untold misery to families and friends and other social costs. We possess already bio-medical proof that alcohol—the misuse or abuse of it—can injure the human liver, the brain, the kidney, the body's resistance to disease, but we do not jail those who simply use alcohol. We do not confuse potential health hazard with criminality. We do invoke criminal sanctions when users violate the law, as by driving under the influence of alcohol or by committing criminal acts as a result of over-consumption. This is reasonable, it is appropriate, and equally as important, it is explainable and defensible.

We have substantial medical evidence that cigarettes are injurious to human lungs, hearts, circulatory systems, and respiratory systems, but, we do not jail those who smoke. We do not confuse potential health hazards with criminality.

Instead, we attempt to educate people as to potential risks, we attempt to regulate availability along rational lines, so that it is not easy for a 10 or 12 year old to purchase alcohol, for instance. More significantly, by custom and mores, we reinforce society's agreed-upon values and goals. Not perfectly, but not totally unsuccessfully either.

I suggest we have two problems in the States, and I would not be surprised if you have them both here: a health problem and a criminal problem. They are no more automatically synonymous in the case of marihuana than they are in the case of alcohol. If anything, they are probably less so in the case of marihuana which does not tend to promote violent, anti-social behavior as a result of its consumption.

At times we have been guilty of playing the old shell game of taking a preconceived notion of wrongdoing, structuring our laws to assure that users of marihuana are branded criminals, and then pointing to those so-called criminals to prove that preconceived notion. This invites disrespect for our laws, in fact, I would submit, guarantees it.

We must continue to investigate the possible harmful consequences from marihuana use. At the same time we

need to be carefully looking at the entire range of non-criminal responses to its sale and use.

No responsible citizen wants marihuana sold on every street corner, available to children. Its use by those older, I submit, can also be effectively discouraged. We are learning a bit about this as evidenced by the experience in Oregon. Use there is not increasing.

But meanwhile, for the reasons I have cited above, giving criminal records to hundreds of thousands of young users only exacerbates the potential harm to society and to basic values. Additionally, it is demonstrably clear that those current policies of prohibition are not effectively discouraging use. New policies are in order, and I for one believe a majority of Americans at least are willing to give them a chance to work, because they are so dissatisfied with the old. Thank you, Mr. Chairman, If there are any questions, I will be glad to try to respond.

The Chairman: Thank you, Dr. Bryant.

Senator Neiman: Dr. Bryant, as I mentioned to you before, we are unfortunately not going to have the advantage of Mr. Horton's testimony. I wonder, since I know you are personally, very knowledgeable about it, if you would tell us a bit more, in practical terms, about the Oregon experience.

Dr. Bryant: Let me go back a bit. In 1962 the American Law Institute—and I am sure many of you are aware of this—did a very thorough analysis of many aspects of the state and federal criminal codes, particularly concentrating on sentencing provisions and categories of criminal behaviour. That report, issued in 1962, and commented upon by several groups since that time, recommended the creation of a new type of criminal offence, an offence that represented an action that society disapproved of in its collective wisdom, but which society did not choose, or desire, to brand as criminal behaviour specifically attaching to such violations a criminal record that would follow that individual throughout his life. There are many categories of behaviour that come to mind.

The State of Oregon, 12 years later, took the American Law Institute seriously, and, in effect, created a new category of offensive behaviour, or disapproved behaviour. This is called "a civil offence". There is a scale in these things, as you know: felony, misdemeanour, civil offence. Another term that is used quite often is "infraction". There are a number of terms. The State of Oregon, at the end of 1973, after having discussed the matter for a couple of years, as I understand it, in their state legislature, added this provision to the law, and added it with certain caveats. It applies for possession or use of one ounce or less of marihuana. The way it works practically is that an individual who is discovered by a law enforcement authority to have one ounce of marihuana or less in his possession then is given a citation, much as you might be given a traffic ticket in the States for having run a stop sign. This individual then is required to do as you would have to do with a traffic offence; he is accountable to the court, and therefore has to show up in court on a certain day. What occurs then is that he pays a fine. He is not liable to imprisonment, and he develops no criminal record, so that it is a question, in all senses of the word, of a civil violation. The State of California—and I received a telephone call yesterday, just before I came, to this effect—is now considering legislation modelled along the lines of the State of Oregon. It was reported out of the Senate Judiciary Committee three weeks ago in California and yesterday

it was reported favourably out of the Senate Finance Committee because there are certain financial-fiscal aspects to the bill. But they have kept the infraction in the criminal law, and they have adopted a schedule of mandatory criminal fines for the possession of small amounts. These are all small fines of—and I cannot remember the amount exactly—\$200 or \$300.

The State of Minnesota is moving to do something along the lines of Oregon but, again, slightly different. I am not aware of all the details of it, but they are also keeping it in their Criminal Code as a criminal offence, but they are having no fine for an initial infraction. It is something like a traffic violation where you have to go somewhere and hear a lecture or you are sentenced to something other than a fine or a prison term. That is for the first offence. But there is an escalation so that for the third offence you move into a fine, and I think for the fourth offence, for simple possession, you have the possibility of a prison sentence.

In California there is a provision in the law which calls for automatic expungement of the criminal record every two years if there has not been in the meantime another infraction of the law. In addition, in the State of California, the sale of one ounce or less for no profit or for no remuneration is also subject only to a mandatory fine and not to imprisonment. That is not the case in Oregon.

There is legislation currently before the federal Congress in the United States that is co-sponsored by Senator Javits and Senator Percy, and a long list of others, which in effect will make the federal criminal statutes in line with the Oregon experience and along the lines of the Oregon model. It would be a simple citation for a civil violation. This legislation was introduced last week, and we will probably have hearings later in the spring. It is interesting to note that in 1974 there were 420,000 arrests in the United States for violation of marihuana laws, and of those only 2,600, I think, were arrested under federal statutes and the rest were under local or state statutes or jurisdictions. Of that 2,600, by far the largest number were for trafficking offences and not for simple possession.

I took a count yesterday before I came and I found that the marihuana question or the cannabis question is currently before the state legislatures of 21 states in the United States and all are considering some form of decriminalization or reducing the severity of the criminal sanction or introducing something that is in line with the experiment in Oregon.

Senator Laird: I presume that you would agree that the use of marihuana in any quantity will not do you any good.

Dr. Bryant: I would agree with that wholeheartedly.

Senator Laird: Incidentally, comparing it with the other drug that you mentioned—and this may come as a shock to you, but I have known Canadian senators who have used that other drug you mentioned—

Senator Prowse: For shame!

The Chairman: Name them!

Senator Laird: Do you then, going a step further, feel that the excessive use of marihuana, like the excessive use of alcohol, can be extremely harmful?

Dr. Bryant: I have a feeling that it probably can. I do not think we can document how extremely harmful it can be. These relate more, not so much to my feeling and belief,

but to the fact that at this conference we held in January of this year we purposely convened a group of top-flight scientists. I am not a top-flight scientist, but it was very interesting to listen to this group of people individually who, over and over again, expressed their lack of satisfaction and lack of feeling of being satisfied with the state of knowledge in any of these fields in which these findings are being reported about how bodily systems really work. So that while I feel and believe that the prolonged use of any psychoactive drug, be it alcohol or marihuana, has deleterious effects on the individual, I do not think we can prove that.

Senator Laird: Obviously it is going to take a long time to be accurate about the effects so far as health is concerned, mental health and physical health, from what you have said and from what others have said before you. Now perhaps this is unfair, but can you give us a clue as to how many years of experimentation must elapse before we can arrive at certainty?

Dr. Bryant: We asked the same question at the scientific conference and we got sort of "pulled out of the air" guesstimates—and that is what they were, guesstimates—about some experiments going on now in the field of genetics—and we are improving our technology rapidly in this whole field and how to measure chromosome damage—that after something like ten or 15 years of prospective studies we will know a lot more than we know now. I use that example to show that there was a great deal of caution urged by every one of these scientists and just about everybody I have talked to said not to look to science for definitive answers about the harmful effects of marihuana for several years to come.

Senator Godfrey: I wonder if you could explain what exactly you mean by "prospective research" and "retrospective research".

Dr. Bryant: Well, taking marihuana as an example, most of the studies that have been done—and I must admit that they cloud up the literature in the States—consist of studies done on marihuana users after they have smoked marihuana, and after they have done a lot of other things also. One of the most oft-quoted studies that supposedly led to positive proof that heavy smokers of marihuana develop severe psychological problems is a study done on a small group of individuals, young teen-agers, who had indeed all smoked marihuana and who had nearly all also used amphetamines and barbiturates, and who had all had diagnosed psychological problems prior to using marihuana. This whole thing was very clouded. It is not very elegant science to come back after all those things have occurred and try to single out—and it is not only not elegant science, but it is very difficult to do—the effect of marihuana. So that when I try to isolate it and say, "This condition is related to the use of marihuana, and that is related to the use of something else", we must keep in mind that the action of these drugs is not understood that well. Prospective research, in its cleanest and purest form, would mean the introduction of only one variable such as the ingestion of marihuana with no other drugs, no psychological problems and no physical problem whatever associated with that person, and then following that individual or group of individuals over a long period of time. Morally and ethically that is an almost impossible thing to do, because it is certainly illegal. In most states you are asking someone to use an illegal drug. We have grappled with this. I think you will have to have a very

broadly based prospective study of the very young, which follows them up and separates those who happen to use marihuana and those who do not happen to use marihuana, or those who use it once and those who use it 10 times; and then follow them over a long period of time and measure what you can as you go. I think we will learn a lot about behaviour and certain psychological kinds of problems that are reported. We may learn that some of the problems are real and some are not. On the other hand, I must say what I said to Senator Laird, that I am not overly optimistic that we shall learn a lot, even if we do a thorough prospective study of some of the more sophisticated scientific findings, purely because of the limitations of science.

Senator Neiman: One of our previous witnesses cited, as examples, Drs. Kolansky and Moore, who had done studies. Is that the type of study that you are talking about?

Dr. Bryant: That is the study.

Senator Neiman: The statement was made that it did cause brain damage. I wanted to find out whether this was a purely isolated case—

Dr. Bryant: I am sure that your experience is similar to ours. We have had legislative hearings, or any kind of hearings, where we have had a steady stream of people, including myself, come forward and impart wisdom on the marihuana issue. One of the most disturbing turn of events in the United States over the past four or five years is the number of scientists who have become caught up in something that I wish they had not. I do not intend to single out Drs. Kolansky and Moore. I have met them, but I do not know them personally. No doubt their intentions are totally good. They happen to believe personally that marihuana is a very dangerous drug. I know a lot of reputable scientists who agree with that and who believe it very strongly. It becomes a problem when you report so-called scientific findings without first utilizing long agreed upon scientific techniques for good research—a value kind of judgment on so-called good research—and submitting your findings and data, whatever they may be, to your scientific peers, who have mastered the same field of science and speak the same language, and therefore can critique your findings and the validity of your methodology.

Unfortunately, what happens in the United States—and it has to happen here also—is that you get a few trigger words. When someone says, "There is brain damage," it makes the front page and the evening news. When someone says, "There is chromosome damage," that is worse, because it affects generations to come, and it makes the front page and the television news.

What we attempted to do at the conference—and I dwell on this because it is important—is really to try to get a group of scientists to evaluate as peers. As I said, we purposely did not use anti-marihuana or pro-marihuana scientists. We tried to get those who were not, and we said, "Would you look at this research as reported in the scientific literature, and evaluate it according to scientific criteria?" That was done, and studies like this to which I have referred, to put it simply, just do not hold water.

Senator Sullivan: Who will evaluate that scientific research?

Dr. Bryant: That scientific research has been evaluated by a number of people. The National Institute of Drug Abuse has done it. It has been reviewed. It is a fairly well known finding. If it were good scientific research and

entirely accurate—it has some good aspects to it—the findings will hold water; but, as a whole, I do not think it will.

Senator Croll: Are you saying what others have said in effect—if not, please say so—that the real answer is that there is no answer, as yet?

Dr. Bryant: I think that is an accurate statement. I would hasten to say that I would not add, as too many others do, that we have not tried to find those answers and that there has not been some good research undertaken.

Senator Laird: I note that a witness who appeared before the same committee you had in California was Dr. Tinklenberg. He seems to place great emphasis, as I read the evidence, on the personality problem. I shall quote one sentence:

This does not mean that marihuana is not sometimes associated with dramatic changes in lifestyle, but rather, according to carefully executed surveys, the change in lifestyle usually precedes marihuana use.

Therefore he emphasizes, in effect, the importance of the personality problem. It depends on who takes the stuff. Would you agree with that?

Dr. Bryant: Yes, I would agree with that. I think that is one of the consensus points that came out at the scientific findings—that a lot of people who seem to have the most serious psychological problems, had those serious psychological problems prior to using marihuana, and would have had serious psychological problems with or without marihuana. The fact that their problem was accentuated with marihuana, I do not find startling at all.

Senator Prowse: You are familiar, I suppose, with the work being done by Dr. Carleton Turner at the University of Mississippi?

Dr. Bryant: Yes.

Senator Prowse: He suggested, when he was asked the question about using a measure to determine what was a small amount, that we should not fall into a trap. Do we mean marihuana, hashish, oil; do we mean an ounce by volume or by weight, and so on? In the reports that you receive, has this created a problem? Have you any suggestions to make along that line?

Dr. Bryant: I have not heard reports that it has created a problem. I am really very sorry that Mr. Horton could not be here today, as he could answer the question more directly. I have heard Dr. Turner make this point before. I think it is quite valid. One of the participants at our scientific conference made a statement which I thought significant. He has been a leading psychopharmacologist in the United States for 30 years. That was Dr. Louis Harris of the University of Virginia Medical School in Richmond. Dr. Harris said that with all of the psychoactive substances with which he had dealt and had done research over that 30-year period, marihuana was the most unreliable and unpredictable in the laboratory, because the active ingredients are not all known, have not all been identified, and their content can vary all over the map, even to the time of day. There are all these kinds of variations. We had, in December 1974, a first, so far as I know, in the States, where some confiscated—by “confiscated” I mean confiscated by federal narcotics agents in the States—hashish on the streets of San Francisco was less potent than simultaneous purchases or confiscations of marihuana cigarettes—

that particular sample. If you get hung up on it, it is a problem, but, so far as I know, it has not posed a problem in the State of Oregon, and I would only guess that the reason it has not is because people do not measure by volume. They measure by a cigarette or two, and I have a feeling that the law enforcement people in Oregon do as they do in the District of Columbia, in that they do not measure by volume but by the number of cigarettes. They have an unwritten rule about two or three cigarettes.

Senator Prowse: With the civil finding, you may have some constitutional problems setting it up. Do they provide higher penalties for second, third and subsequent convictions?

Dr. Bryant: Yes.

Senator Prowse: How can they do that, if they do not keep a record of it? They must keep a record.

Dr. Bryant: For simple possession? No, they do not keep a record. There is an escalating penalty for sale, but for simple possession there is not. For simple possession, for one ounce or less, it is never recorded. There is no escalating penalty.

Senator Prowse: Even for the sale of small amounts, there are escalating penalties?

Dr. Bryant: Yes; and that is true also in California. There is an escalating provision.

Senator Croll: I have two easy questions and one hard one. Illustrate for me what an ounce of marihuana means? Does it mean enough smoking for a month, two months, a week, a day? You refer to it constantly, and I have no conception of it.

Dr. Bryant: I do not really have that great a conception of it.

Senator Croll: Yes, but everyone refers to it repeatedly, and I do not know what they are talking about.

Dr. Bryant: A fairly standard content purity of marihuana would be sufficient for two or three marihuana cigarettes. I believe it is in that realm, but we are not referring to a great deal of marihuana.

Senator Croll: Yes, but one ounce would be very expensive, would it not, for two or three cigarettes?

Dr. Bryant: One ounce—

Senator Croll: Well, if you are out of your field, forget it, doctor.

Dr. Bryant: I am out of my field; I am confused between grams and ounces. One ounce would probably make 15 or 20 cigarettes.

Senator Croll: It is just so that I can have some concept, and you can answer that either as a lawyer, or a doctor.

Dr. Bryant: I was trying to answer something when I did not have sufficient facts! I apologize!

Senator Croll: Have you ever heard the term “recreational drug of choice” before; is that a common term?

Dr. Bryant: It is a common term in the United States; yes, it is a coined common term.

Senator Croll: “Recreational”.

Dr. Bryant: I am just trying to categorize it; it is not the Queen's English, but it describes the term that is used fairly commonly in the United States. It is using drugs for recreational purposes, and an increasing factor is that a number of Americans who are at their first drug of choice for recreational and other purposes, use marihuana.

Senator Croll: You and other knowledgeable people talk of education with respect to drugs. Their hope is that we can tell our story, educate people and they will use less of them and understand the difficulties involved. Then you move over a little and compare it to alcohol and talk of the abuses of that.

Now, doctor, is it not true that almost the whole medical world, the Department of Health, Education and Welfare in the United States and the Department of National Health and Welfare in this country, along with all other authorities, have warned and warned and warned that smoking is bad for an individual. They have even had it inserted on the cigarette package and have done everything they possibly could. They are authoritative people, yet there is an increase in cigarette smoking amongst the people in the United States and Canada today.

Dr. Bryant: I can only make a comment, senator. I deplore the increase and know many who do. Most thinking individuals do deplore that increase in the face of all the scientific evidence, which is almost irrefutable. I do not know whether an appropriate response would be to force my deploping of that into the form of criminal sanctions. Unfortunately, as I am sure a number of witnesses have testified, we human beings have frailties. We do a lot of things which we should not and which are ill advised. Our physicians and public health authorities will tell us these actions are ill-advised and harmful. Using drugs for recreational purposes and relaxation seems to be an example of that type of activity. Psychoactive and mind and mood altering drugs have been with us since the beginning of time. I have no doubt that in a wide variety of forms they will be with us until we are all gone. You and we, certainly in the United States, must balance things. To what extent are we willing to go, in an endeavour to protect the health of the public, on the one hand, and to what extent do we intend to guarantee individual rights, on the other? These are delicate problems, and that is why we have eminent Senate committees to help us.

Senator Sullivan: Mr. Chairman, I read the brief sent to us by Dr. Bryant, which he delivered to the Senate Judiciary Committee of the California State Legislature, and have enjoyed his comments very much. For purposes of introduction I might tell him that I am a physician, not a lawyer—thank God. I have been closely associated with the Medical Biophysical School Laboratory of the Faculty of Medicine at the University of Toronto.

In his introductory remarks on page 2 he says:

I believe the drug is not harmless to the individual user, particularly the heavy user. No psychoactive drug is entirely harmless and most, when misused, can injure the user psychologically, if not physically. There are wide variations in this potential harm, ranging from the obvious dangers of acute intoxication to the more subtle potential injury to complex body systems with heavy, repetitive use over long periods of time.

I judge from his remarks that he has a great deal of scepticism in relation to research. Upon what did he base these findings, if he still adheres to them?

Dr. Bryant: As I indicated, senator or at least, I attempted to indicate, I do have scepticism in relation to a number of findings. I also have a great deal of respect for others; and, if you wish, I can enumerate them.

A very responsible group of scientists has reported a decrease in the level of male hormones, testosterone, caused by heavy ingestion of marihuana by adult males. That is a finding which worries me. In my opinion, it should worry us all, because if that has some clinical importance there would be repercussions in our society. That causes me to make statements such as that.

When I attended the conference we held in early January of this year I was somewhat reassured to find that other scientists discovered, with all the caution that we mentioned earlier, with not even the same sample or the same time of the day, that with a wide variety it is difficult to standardize the dosage. However, in other findings, with good research, again carried out by a competent group of scientific researchers, the findings were contra. Just the fact that a group of responsible scientists, in this instance quite responsible, have reported different findings, is sufficient, in my opinion, to urge caution and concern. It is not sufficient to run out into the streets and say the sky is falling, because I do not believe it is. That is the point I am endeavouring to express.

Senator Sullivan: The reason I ask that is because one week from today Professor Harold Kalant, the Director of the Addiction Research Foundation of Toronto, who has carried out extensive work in this field, will testify. I am sure that his remarks one week from today will not jibe with what you are telling us today.

Dr. Bryant: That would not surprise me; I am sure you can find a number of people who are very undecided.

Senator McGrand: In your opinion, do the majority of those who use marihuana favour harsher or more lenient laws? Do they, as a group, want to rescue society from the evils of this drug, or are they satisfied to go along with things as they exist?

Dr. Bryant: According to our surveys, senator, the majority of the users of the drug would prefer more lenient laws. As to their goals and aspirations for society, I do not think I can comment.

Senator McGrand: There must be some mature well-balanced people who are using the drug.

Dr. Bryant: That is right.

Senator McGrand: And would the majority of those people prefer harsher or more lenient laws with respect to its use?

Dr. Bryant: A natural phenomenon is occurring, at least in the United States. The widespread use of marihuana, the popular use of marihuana, is a product of the 1960s. With ever passing time we see that the people who were using the drug in the 1960s are getting older and many of them are moving into responsible positions in society. Although this is not a scientific fact, my understanding from travelling extensively around the United States and talking to a lot of people, is that most of that group would prefer more lenient laws with respect to marihuana and the discontinuance of the use of the criminal sanction.

Senator Croll: I am wondering what the term "current usage" means.

Dr. Bryant: It can mean several things, senator. Unfortunately, as is the case with the drug itself, there is no standardized meaning of the term "regular" or "current" usage. We broke it down as to those who use it on a daily basis, and that group is subdivided into those who smoke more than one marihuana cigarette and a lot, and "a lot" could mean 15 to 20.

Senator Croll: In a day?

Dr. Bryant: Yes, a rare individual. Another subgroup of regular users are those who smoke marihuana more than once or twice a week. We differentiated between the daily user and the frequent user, and the distinction we used is an individual who uses marihuana two or three times a week. A number of people will refer to individuals who use marihuana more than three times a month as regular users. For our purposes, however, when trying to explain ourselves in precise terms, we do not so classify them, although in some of our surveys we have included that kind of question also. The largest number of Americans, according to the surveys we have taken, who have tried marihuana, for the most part, are in the once or twice ever category.

Senator Croll: I am a little backward when it comes to this business. How does one recognize someone who smokes marihuana?

Dr. Bryant: I don't know how I look to you, senator, but I have smoked at least two marihuana cigarettes, years ago. I do not say that facetiously. I think it would be very difficult, unless you came across someone acutely intoxicated on marihuana, and even then it would be quite difficult for you to discern whether or not the individual is acutely intoxicated from the use of alcohol or from the use of marihuana, although you can sometimes use your common sense to determine which.

There are some discernible physical signs, such as the eyes becoming bloodshot and this type of thing, which are evident on closer observation. For the most part, that is a question that is posed to us, as well as to organizations such as ours, by parents. They want to know how they can tell whether their children have smoked marihuana. The fact is, if the child does not smoke in their presence, it is going to be nearly impossible for them to know. Some of my colleagues would hasten to add, however, in the United States, at least, it would be a good bet that they were, because so many do.

That, also, I might indicate, is another myth that has to be shot down. While there are millions of people who have tried marihuana and millions who use it, I want to remind you that there are millions and millions who do not use it and millions and millions who have not tried it.

One of the great fears expressed by the people in Oregon was that they would be inundated with youth and with users. They were fearful that a lot of people from the east would move to Oregon in order to take advantage of the relaxed laws. This, however, did not occur. Use patterns have not been altered as a result of the more lenient laws.

Senator Croll: Anyone who smokes a large number of cigarettes, for example, will have a tobacco odour on his or breath.

Dr. Bryant: Not so with marihuana. You can smell marihuana while it is burning. If you are in a room where someone is smoking a marihuana cigarette, you can smell

it, but if someone had smoked a marihuana cigarette in this room 30 minutes ago, you could no longer smell it.

Senator Prowse: If you came into a room where it smelled like someone was burning tea leaves and there were no tea leaves being burned, you would be fairly sure.

Senator Langlois: Dr. Bryant, a number of witnesses who have appeared before this committee have recommended that the legislation presently under consideration should not be allowed to come into force before a nationwide campaign aimed at informing the public of the true objectives of the legislation and warning them against the ill effects of marihuana that has taken place. Would you please tell us whether such a statewide or state-sponsored campaign took place in Oregon before the more lenient legislation was passed into law?

Dr. Bryant: No such campaign took place, senator, but the one thing which did occur, which was coincidental with the passage of the more lenient legislation, was the state assembly election, including the election for governor. During the election campaign, the new law was discussed. It was, in effect, something of the nature of a referendum and an opportunity to educate people on the part of those seeking elective offices as to why they chose to be for or against the legislation.

There is an organization in the United States known as the National Organization for the Reform of Marihuana Laws, NORML, or organization for which I have great respect. It has been very effective in terms of educating the public at large. Many people think it is a pro marihuana organization, but I have not found it so. Its official policy is one of discouragement, not encouragement, but one also of decriminalization. It has done an effective job of placing educational materials respecting marihuana on both the televised media and the press. It is an ongoing process. However, efforts in this regard are almost always offset by the sensationalized newspaper story or television item that will come out and get instant notoriety.

The Drug Abuse Council, being a national organization, I think it would be fair to say, has been the most active of national organizations in promoting and trying to promote public discussion. We have spent a good deal of time over the past year to that end, and this has been helpful because we are an "establishment" organization. In other words, we are sponsored by well-established, fairly conservative foundations and our board is made up of well-known, highly reputable, many quite conservative individuals. It has been particularly beneficial to the public to have an organization with a reputation such as we have to speak out on these issues and to encourage public debate. There has been no major federal government sponsored campaign. The Department of Health, Education and Welfare is required, by law, to provide to the Congress, and thereby to the people, an annual report on the scientific findings in respect of marihuana. That report receives some distribution, but not a great deal. So far as I am aware, there was nothing of that sort in Oregon.

Senator Langlois: Do I take from what you have said, Dr. Bryant, that you would lend your support to such a recommendation?

Dr. Bryant: I think it would be appropriate. The only thing I would hope you would not do—I do not mean to give you advice inappropriately, and I do so with deference—would be to delay what you have in mind too long. I think you do have to explain it because it will be, as I

understand it, a major change. If I may add one last thing, I am increasingly impressed with the ability of certain individuals in the United States to explain fairly complicated issues such as this with a great deal of nuances and subtlety in a way that neither frightens the public nor encourages use. I think people are learning and that art is improving.

Senator Prowse: You spoke of a heavy user who would use it every day, using, say, 15 or 20 cigarettes a day. I presume he would be just perpetually stoned.

Dr. Bryant: Yes. There are very few involved.

Senator Prowse: When they do that, after a while are they in trouble?

Dr. Bryant: I think it would be safe to say that anyone who is either perpetually stoned on marihuana or inebriated from alcohol—

Senator Prowse: They would get into trouble if they did that.

Dr. Bryant: A lot of days go by and he is going to miss it. That is of concern; it is a legitimate concern. I do not think that is the normal behaviour pattern of marihuana users, any more that it is with alcohol.

Senator Prowse: If he could not get the marihuana he would probably be stoned on something else, because he has that kind of personality.

Dr. Bryant: I think that is a very valid point.

Senator Heath: As our laws exist today in Canada under the Criminal Code for simple possession of marihuana, the total effect is similar to the situation in Oregon today. The ability to send somebody to jail for seven years if there is a successful prosecution is simply a tool for apprehending a criminal who cannot be apprehended in any other way. Similarly with a breaking and entry charge, somebody can be jailed for life. This is not being done to some sneak thief climbing in through a window; the court has discretion there, and there is discretion on the part of the prosecution in the first place. I therefore cannot really see that the Oregon situation is all that different in substance, except that you have removed a possibly useful tool for a criminal type trafficker who may be involved with something else, if you cannot nail him and you establish a pattern, which I think is a term in jurisprudence in the United States, as it is here. This I find rather interesting, because it appears to be revolutionary.

Dr. Bryant: I do not really know what the situation here is. I do know that in Oregon one of the major differences in the law is the lack of a criminal record being kept on thousands of young people. Maybe you do not arrest many people in Canada. I have some statistics that would make me wonder if you do not. I think you do, and prosecute a lot of them, and they get criminal records. In a general way, what I have sympathy for, and understand the difficulties of, is the prosecuting of people who do commit serious crimes. Yet, I am quite leery of passing flexible laws that are going to be used for other purposes, because I think society is overly damaged by those kinds of laws. However, I really cannot comment or respond further on that.

Senator Neiman: I have something here which might be of interest to Senator Heath. There were 18,603 people prosecuted in 1973 for simple possession in Canada. I will

give these charts later. Out of the total number—of course, it perhaps is not a great number—the total number of prosecutions and convictions in Canada in 1973 came to almost 20,000.

Dr. Bryant: That is fairly analagous to the situation in the States.

Senator Neiman: I have another chart here indicating the sentences involved for trafficking alone. We are talking about a substantial number of people in Canada who still suffer prosecution and a criminal record for simple possession, and all other offences under the law as well.

Dr. Bryant: Out of 420,000 arrests in 1974 for violation, 93 per cent were for simple possession in the States.

Senator Neiman: Only last week we had some medical evidence, and one of our witnesses recommended that the proposal contained in Bill S-19 to put cannabis under our Food and Drugs Act was perhaps incorrect. He recommended a separate act entirely, for various reasons, to deal with the whole question of cannabis. I may say that I think he himself ended up by recommending that simple possession of cannabis be treated, in the first instance at least, for the first offence, without there being any criminal record attached to it. One of the reasons he made that recommendation was that he said cannabis had no therapeutic value whatsoever, and therefore it should not be under our Food and Drug Act. It so happens that this week I read a news report from an organization called NIDA, which is obviously some national drug abuse organization—

Dr. Bryant: National Institute of Drug Abuse.

Senator Neiman: They published some findings from California studies showing that there just possibly could be some therapeutic uses for marihuana. They mentioned cancer, or some types of cancer. I was curious about that.

Dr. Bryant: Yes. This concerns the introduction of the medicinal use of the product of cannabis as distinct from the fibre of hemp. One of the findings with which I am familiar, which I think is of particular significance, is that it has been used in Boston by a team of researchers from the Harvard Medical School, in treating the unremitting and almost untreatable nausea and vomiting that comes from the use of anti-cancer therapeutic agents, particularly radiation with remarkable success when almost nothing else was working. This is going to be reported in the American Journal of Oncology, the national cancer journal, some time in April I think. This is a most significant finding, because it addresses itself to problems for which there have not been very many therapeutic tools.

There are some reported works showing that the use of marihuana helps in the condition known as glaucoma, the eye problem. There is a research project, which the National Institute of Drug Abuse is now funding for a five-year period to study that.

There have been some reported findings that marihuana is effective in lowering blood pressure under certain circumstances when other things are not. It is a very tentative kind of finding, but it is thought it might have some potential use there, and some research is going on.

By far the most important, however, is the one to which you refer. In the States this made front page news, much like findings on brain damage does—"Cancer Cure", which was a gross overstatement of the finding, as you can well

imagine. But one of the most widely publicized findings about the potential harm of marihuana has come from a group of researchers at the Columbia University School of Medicine. They report that marihuana, or the active ingredients to marihuana, can interfere with the body's immunological system, and therefore could possibly lead to a reduction in resistance to disease. This was a test tube finding. They focussed primarily on infectious diseases. When a number of scientists, at the behest of and with the funding of the National Institute of Drug Abuse, attempted to replicate those findings, using similar circumstances, one of the groups at the University of Virginia, I think, which had an on-going research project and was trying to develop better therapeutic agents for cancer, happened to use the drug in that setting, with that kind of knowledge. They found that suppression of the body's immunological response in the test tube—again only in the test tube, as they did at Columbia—seemed to offer some leads to alternative therapeutic measures. Simply stated, it is that if someone had ingested marihuana he might be able to take certain therapeutic agents which he could not take otherwise.

Another interesting point about which I am particularly excited was that if the body's immunological response is affected significantly, then the whole field of organ transplants may open up, because the rejection of these organ transplants is related to this similar kind of phenomenon. That is much too simplistic an overview, but while I do not think anyone would say, "Take marihuana, because it will cure all your ills," or "It is a therapeutic agent," nevertheless, it is an argument which has to be pursued.

Senator Neiman: So it would seem reasonable to leave it under our Food and Drugs Act along with the other therapeutic drugs. On that basis, anyway, it would seem reasonable for the moment to leave it with the other therapeutic drugs.

One other statement you made, Dr. Bryant, was that you believed that the use of marihuana can be discouraged. Would you like to suggest to us the ways that you really feel that this can be done most effectively?

Dr. Bryant: Yes. I think the most effective way to do it is to get our laws reasonable and rational. What I referred to is that, particularly in the United States, in the past 10 to 15 years that group of professional drug educators who are in our school systems and elsewhere have lost nearly all of the credibility they had about dangerous drugs, because of the impossible position they have been in with respect to marihuana.

In effect, they have been holding forth with the old and established line that marihuana is a most dangerous drug, that it is narcotic, and that sort of thing. They have been saying that, when the kids themselves knew better, when the kids knew that this was not the case. The kids knew that one of the old myths was that marihuana was a violence-producing kind of drug which led people to maim, murder, rob and rape, and that kind of assaultive behaviour. The kids knew that their friends who were using marihuana were not maiming, murdering, robbing, raping or acting in that kind of assaultive way.

The drug educators—either because of the local political situation in the school board or because they believed it sincerely and their belief was furnished and supported by government-financed literature—were compelled to make this case and they would make this case. But when they also said, "Heroin can be dangerous and has the following kinds of potential harms," what you witnessed was a generation of young people saying, "I don't believe what you told us about marihuana so I'm not sure I can believe what you tell us about amphetamines or heroin or any other hard drug." I realize that is an over-simplistic statement, but it makes the point.

Another component of that has to do with my own generation and older—and this is an old one which I am sure you have heard a hundred times. Our drug choice was alcohol, which we used fairly gleefully and happily without even the remotest possibility—except in some rather far-out set of circumstances—that we would develop a criminal record or much less go to jail. Nevertheless, we began to lose a certain respect for the law. I think this is most pronounced at this stage, because of the times and the other things involved.

If we were to get the law—and I am referring particularly to the United States, because that is the only thing I can really speak to—so that it reflects what we know about marihuana and what we do not know, in other words, if it were an honest reflection, and if we were to have the kind of public campaign you were speaking of in terms of informing the people and making it reasonably rational, I think that the drug educators could then go out with the facts, rather than with a myth. They could then point out that the law supports the facts and is reflective of the facts rather than of a myth. The educators would be able to establish a rapport with young people and they would have credibility in the minds of young people, so that we would see a replication of what happened in the state of Oregon: there is no disturbing increase in the use in Oregon, and that kind of law is there.

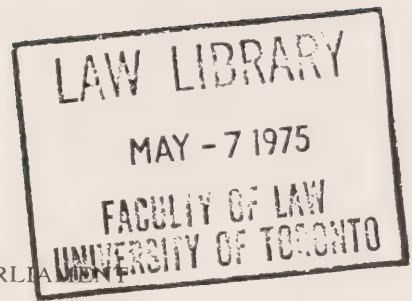
As I tried to make the point in my prepared statement, it is explainable and defensible. Currently that is the missing ingredient. We are never going to get anywhere, as Senator Laird pointed out, by scaring people away from marihuana. We have not got anywhere by trying to scare people away from, igarettes or away from alcohol. All that does is make those who do not want to use it feel better because they have given strong speeches that others should not. I do not think there is very much other impact from scare stories. In the United States, in fact, it is clearly measurable that the scare tactics we have used with all drugs, including heroin, have accounted for nothing. Their use has gone up rather than down.

The Chairman: Dr. Bryant, I want to thank you on behalf of the committee for your contribution this morning. The committee will now adjourn until next Tuesday, March 18, when it will be sitting morning and afternoon. The witnesses will be the Canadian Criminology and Corrections Association; a representative of the Law Union, Toronto; the chairman of the Alcohol and Drug Commission of British Columbia; and Dr. Harold Kalant of the Addiction Research Foundation of Toronto.

The Committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75



THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

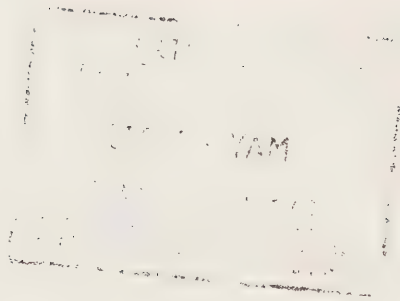
Issue No. 14

TUESDAY, MARCH 18, 1975

Ninth Proceedings on Bill S-19, intituled:

**“An Act to amend the Food and Drugs Act, the Narcotic Control Act
and the Criminal Code”**

(Witnesses and Appendices: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

ATTEST:

Tuesday, March 18, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Fergusson, Godfrey, Laird, Langlois, McGrand, McIlraith, Neiman, Prowse, Quart and Robichaud. (13)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee continued its examination of Bill S-19 intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

The following witnesses, representing the Canadian Criminology and Corrections Association, were heard in explanation of the Bill:

Mr. A. B. Whitelaw, Q.C., President;

Dr. C. H. S. Jayewardene, Chairman and Professor, Department of Criminology, University of Ottawa;

Mr. W. T. McGrath, Executive Director.

On Motion of the Honourable Senator Prowse, it was *Resolved* to print the names of the members of the Board of Directors of the Canadian Criminology and Corrections Association in this day's proceedings. They are printed in Appendix "A".

At 12:35 p.m. the Committee adjourned until 2:00 p.m.

At 2:00 p.m. the Committee resumed.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Fergusson, Godfrey, Laird, Langlois, McGrand, Neiman, Prowse and Robichaud. (11)

The following witnesses were heard by the Committee:

Mr. Peter Stein, Chairman of the Alcohol and Drug Commission of British Columbia, Vancouver, B.C.;

Mr. Paul D. Copeland, Secretary, The Law Union of Ontario, Toronto, Ontario.

On Motion of the Honourable Senator Langlois, it was *Resolved* to include the Appendix to the Brief of the Law Union of Ontario in this day's proceedings. It is printed as Appendix "B".

At 4:35 p.m. the Committee adjourned to the call of the Chairman.

Denis Bouffard,

Clerk of the Committee.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, March 18, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 11 a.m. to give further consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are continuing our study of Bill S-19 with the appearance here of representatives of the Canadian Criminology and Corrections Association. We have Mr. A. B. Whitelaw, President; Mr. W. T. McGrath, Executive Director; and Dr. C. H. S. Jayewardene, Chairman and Professor, Department of Criminology, University of Ottawa. Mr. Whitelaw will speak first. He tells me they have no memorandum to submit to us.

Mr. A. B. Whitelaw, President, Canadian Criminology and Corrections Association: Thank you, Mr. Chairman.

Honourable senators, I am very pleased to appear on behalf of our organization. The Canadian Criminology and Corrections Association, as of this 18th day of March, is part of the Canadian Council on Social Development; but as of April 1 we will be an independent organization. Although we will continue our affiliation, we will have our own finances and we hope to expand our work into various areas which we do not presently cover.

For your information—but probably you already know this—we cover a very wide spectrum of both criminology and corrections. We have associated with us people who are concerned in provincial corrections administrations, prison guards, reformatory people, federal officials both in the Department of Justice and that of the Solicitor General, and provincial associations of corrections which cover a wide spectrum in their respective provinces. We also have university professors, members of law schools and schools of criminology. We have the John Howard Society, the Elizabeth Fry Society, halfway houses, and most people in the correctional field. Generally speaking, we do not gather them all together at one time, except on the occasion of our bi-annual congress of corrections.

Honourable senators, with respect to marihuana, which is the subject before us today and the bill in question, our board of directors—which consists of approximately 62 people—has been debating our position for the last year or more. Originally we had made a submission to the Le Dain Commission in which we took much the same position as is taken by the present bill. However, a number of members of our board—an increasing number, I might say—became convinced that the position we had taken was untenable, in that it did not provide for taking away the distribution of marihuana from the hands of the criminal elements in

whose interest it was to push the sale of the product. After considerable debate, by a two-to-one majority of those voting, it was decided that the society would be in favour of legalization.

We have a number of arguments to present in favour of legalization. We have a conviction that government control of production and sale is necessary, in the same way as provincial liquor boards handle the sale of liquor. We feel that the profits from the sale of marihuana should be used for addiction research of all types and should not become just part of the general revenues of a province. I may hasten to add that we, as a society and as individuals, are not suggesting that everybody give up liquor and start smoking pot. We are not in favour of the use of marihuana; but we do not see at the moment that it should be a criminal offence to have possession of it.

We feel that, in connection with a fairly new drug coming on the scene—new in the sense of becoming important in the drug sense—the principle should not be that the drug has to be proven to be not harmful before it is taken out of the criminal context but, rather, that it must be proven to be harmful before it is put in the criminal context. We feel that any other approach to the matter is really begging the question.

Of course, we are strongly in favour of not subjecting young people to having a criminal record for possession of marihuana. We feel, and I think you have heard this many times, that by so subjecting them we are widening the breach between the younger generation and the older generation and making young people contemptuous of the entire legal process and of the way the law is enforced. We feel that if the law is to be enforced—and you must admit that this is a very difficult question of enforcing a law against possession of marihuana—it must have public understanding and public support. I feel very strongly that this is lacking in this connection.

I have with me Mr. McGrath, Executive Director, and Dr. Jayewardene, who will also make some comments on this subject. My contribution you can treat as more or less introductory. Mr. McGrath has one or two illustrations to comment on. Dr. Jayewardene has some very interesting evidence on his studies into the research previously done with respect to the harmful, or otherwise, effects of marihuana.

I would say that at this moment our organization, having read the subject very thoroughly, feels that any legislation which merely decriminalizes marihuana still overlooks the question of distribution and fails to take out the profit motive. I would ask Mr. McGrath to carry on from there.

The Chairman: Mr. Whitelaw, at this stage I might correct you, if you have been under the impression that the legislation before us decriminalizes the possession of marihuana. It does not; it merely reduces the penalties.

Mr. Whitelaw: It decriminalizes to the extent, as I understand it, that you impose a penalty but you do not impose a criminal record for possession.

Hon. Senators: No, no.

Senator Laird: In the way the bill reads, there is a criminal record. We have representations that the bill should be changed.

Mr. Whitelaw: I would most strongly urge that there should be no criminal record contained in the bill.

Senator Croll: Mr. Chairman, would the next witness introduce himself and tell us something of his background?

The Chairman: Mr. McGrath is Executive Director of the Canadian Criminology and Corrections Association. He has a long background. I am familiar with it. Would you give the committee part of it?

Mr. W. T. McGrath, Executive Director, Canadian Criminology and Corrections Association: Honourable senators, I have been in my present position for some 18 years. I do not know that I want to go too far in my background; I am not prepared at the moment. The only point I would stress, in addition to what Mr. Whitelaw said, is on this matter of the conflict that is created between some young people and the criminology system, particularly the law enforcement agencies. Many young people consider the prohibition against cannabis unjust. They maintain that the older generation who are in control protect their own preference in drugs, such as alcohol and nicotine, despite the obvious dangers associated with those drugs, while arbitrarily outlawing youth choice in drugs such as cannabis. Their antagonism to cannabis legislation is transferred to the criminal justice system as a whole, and results in a serious decrease in the kind of support necessary if our system of criminal justice is to be effective.

I think that the susceptibility of youth to concurrence with our criminal justice system would be considerably increased if we could take out this stumbling-block. Again, as our president has said, we are not advocating the use of marihuana. Indeed our advice to any person, young or old, is not to use cannabis. There is sufficient evidence that it might be dangerous not to justify the experiment. But we cannot see any justification for an exception being made just in the case of this one drug, to abandon the principle that these are declared illegal only after they have been proved dangerous. And with the feeling of injustice that so many young people have because of this, we would like to see it changed in order to remove this particular stumbling-block to youth co-operation with our criminal justice system. I think that is all I would add, Mr. Chairman.

Mr. Whitelaw: Just to add to that, Mr. Chairman, we recognize the difficulties that might exist along the United States border if Canada were to legalize cannabis before the United States did so, and it might be necessary to co-ordinate legislation in some way. But we do not feel that as a matter of principle this country should always wait for the United States to make a move even though it might create some problems for us.

Now, with your permission, Mr. Chairman, I should like to introduce to you Dr. Cleo Jayewardene, who, as has been said, is Chairman of the Criminology Department of the University of Ottawa. He is a medical doctor who has not practised medicine in this country, having taken his degree in his native country of Ceylon. He has degrees in

sociology and criminology from the University of Pennsylvania and he came to Canada in 1969, when he joined the University of Ottawa. Now he has some comments and information for this committee on some of the experiments that have taken place. I believe he is familiar with the literature on the subject and also he has done some research on his own.

Dr. C. H. S. Jayewardene, Chairman and Professor, Department of Criminology, University of Ottawa: Mr. Chairman, from the research I have done my main interest is to find out the difference between those who use cannabis or marihuana on an experimental basis, those who use it on a social basis and those who abuse marihuana—that is, those who become sort of addicted to it and cannot do without it. It is from there that my studies on marihuana and other drugs have proceeded.

Even if marihuana is to be permitted on an experimental basis, to allow an individual to take it once, if it is harmful to the individual then I guess it should not be allowed. So that is where I want to study the research that has already been done on marihuana. The consensus of opinion appears to be that on marihuana the evidence is inconclusive. There are some who say that marihuana is really damaging, but I think I will go to the other side and say that the evidence tends to point out that marihuana does not have any harmful effects. I base this on the studies that have been done. First of all, the studies that have been done have been conducted on animals, and there has been an interpretation or a projection from the findings on animals on to the human being. There is some justification for utilizing this technique, but before we make our interpretation I think we have to be very circumspect about those interpretations because they are findings on animals translated on to the human being.

The second point on this is that most studies on marihuana have been done with the pure extract, the THC, and having been done with that pure extract we get certain findings and we tend to come to some sort of a conclusion about marihuana itself. But marihuana has other substances in addition to the pure extract, and it is possible that those other substances may be neutralizing or accenting the effect of THC. So when we make any observations on that we have always to remember that.

The third point is that most of the tests that have been done have been done with massive doses of marihuana. That is a situation that you do not always get in society. With these massive doses of marihuana we find that there are certain findings and then certain interpretations as if to reflect the situation as to what happens if you take one.

The fourth point is that the findings themselves are interpretations of other findings. As soon as you say that marihuana causes brain damage, the brain damage has not been demonstrated macroscopically or microscopically. The fact is that most of these experiments were done on rats using THC, with large massive dosages. The rats were not killed after the dosages were given and the brain damage demonstrated either macroscopically or microscopically. They were subjected to certain tests to perform certain tasks that they had been trained to do earlier. In the manner in which these tasks were performed the interpretations have been made as to the brain damage. So they have found that when you give marihuana to the rats and then you get them to do the tests that you have trained them to do, they do not perform as well as rats who were not given marihuana; but they perform as well as rats who have been given large doses of alcohol.

The next thing they did with these tests was that they stopped marihuana, and after they stopped marihuana they trained the rats over again and got them to go through the process again, and then they found there was no differences between the rats that had been given marihuana or alcohol and the rats that had been given alcohol. This, I think, points in the direction that there has been absolutely no brain damage caused because, if there was brain damage, those rats that had been given marihuana would not have been able to perform as well as those that were not given any marihuana.

On those points I base my conclusion that the evidence we have available is not only inconclusive, but it points towards the direction that marihuana does not have any deleterious effects on the human being.

Senator Prowse: What effect does it have, as far as you know?

Dr. Jayewardene: Not everyone gets the same sensation; some have a pleasurable sensation; but others do not.

Senator Prowse: Some become nasty when drinking alcohol and some happy.

Dr. Jayewardene: Yes, some people become nasty on alcohol and some have pleasure. Some people do not feel anything from alcohol and do not take it.

Senator Prowse: They take it because it gives them a sense of well-being and they worry less over problems with which they are faced. Would you say this is why people smoke it, in addition to the effect? They do it because someone told them not to do it?

Dr. Jayewardene: No, this is one of the aspects I have been endeavouring to discover by means of study. The person who will take it the second time can be described as using marihuana because he feels high and nice about it, experiencing a pleasurable sensation. However, what about the individual who takes it for the first time? He does not know, but for some reason or other he takes it. Then he finds it is nice and satisfies some kind of a need he has and therefore continues to take it. It is the same story with food, tobacco or water.

Senator Prowse: Have you any expertise in the field of psychology?

Dr. Jayewardene: A little.

Senator Prowse: I would imagine you have as much as I, anyway. I am not a trained psychologist, such as those who treat patients. One of the points that concerns me is that now marihuana reaches down into the junior high schools, with students of 13, 14 and 15 years of age using it. They are reaching the age of adolescence, or young adulthood, at which they are at a point in our society where for the first time they are leaving the fantasy of childhood and must face up to real life, which involves problems with which they must live.

Dr. Jayewardene: Yes, I agree that is one of the basic problems, to go from the ideal to reality.

Senator Prowse: If a person finds, by using marihuana when faced with unpleasant situations, that it is an escape, and continues using it over a period of four or five years, which should represent the character-forming period in their lives, and increasing the use every time they have a problem because it is a pleasant escape, would that not

leave a person at age 18 with the maturity development normally expected of a 14-year old? In other words, there will be a stoppage of the ordinary maturation at the time they start to use this regularly as a method of dealing with the ordinary problems which eventually must be faced by everyone.

Dr. Jayewardene: I will not agree with you on that, because I am not quite sure that because a person takes marihuana once and finds that his problems are sort of solved he will continue taking it. I am not quite sure that his problems are solved when he takes marihuana. Immediately he takes marihuana he may feel that at that moment his problems disappear. However, eventually he must face those problems.

Mr. McGrath: We should make it clear, senator, that we would certainly put an age limit on this and not have marihuana available to young children, any more than we do with alcohol. One of our concerns is that at the moment, with these drugs being made available through illegal channels, it is very difficult to control it. Now, making it legal will not in itself solve this, any more than is the case in respect of alcohol. Children can obtain alcohol also. One of our reasons for desiring the supply to be controlled is that perhaps one could keep it out of the hands of younger children.

Senator Prowse: I will go on from that point; you and I have some difference of opinion in the one area on which I was questioning. I watched a TV program on CTV recently, in which children were driving under the effects of alcohol and marihuana smoking. They were making really bad mistakes after smoking marihuana. Would you agree that this presents a very real and important danger when everyone has "wheels", as they put it, these days? A person operating a vehicle while under the influence of alcohol can be pinned right down by the use of a machine. If they are on marihuana and driving strangely it can only be observed that they are doing so and there are no simple tests to indicate why their behaviour is strange.

Dr. Jayewardene: Up to the present time, no. However, up to very recently, as far as alcohol was concerned, we were not able to say this behaviour was due to alcohol.

Senator Prowse: Just a minute. When you say "the present time", my association with courts goes back to 1934, at which time I worked first as a reporter. We saw many offenders charged with drunken driving in those days and the evidence was that they smelled of alcohol, which explained their strange behaviour.

Dr. Jayewardene: Yes, but today you will find that smelling alcohol in itself is insufficient.

Senator Prowse: Oh, there must also be strange behaviour.

Dr. Jayewardene: When I was giving evidence in the courts as to alcohol I had to categorize a person as taking alcohol and being under its influence and the fact that his strange behaviour with the vehicle was due to alcohol or that he was under the influence of alcohol. Just the smelling of alcohol does not establish that, and even now there must be a certain blood level before it can be said that strange behaviour is due to consumption of alcohol.

Senator Prowse: Don't bet on that either; it only requires the smell of it.

Dr. Jayewardene: However, it is possible for a person who has not taken alcohol or marihuana to make a mistake while driving a car. So there is not positive abuse of alcohol or anything else. However, if it is abuse and it can be said that all this strange behaviour was caused by consumption of alcohol, it is not just abuse. A diabetic might have taken too much insulin.

Senator Prowse: I will agree with respect to the whole field of abuse.

Senator Croll: First of all, I am sorry that the chairman and other committee members did not take advantage of the opportunity to have the witnesses tell us who compose their organization and the background of those on the stand. However, I certainly do not intend to do that on my time. I looked forward to their appearance today.

My view is, perhaps, a little different than that of others here. I look upon this situation as a medical, criminal and research problem. I am prepared to accept the evidence of the Canadian Medical Association, despite the fact that some medical men have appeared and told us that the Medical Association does not know what it is talking about. I am prepared to accept the evidence of the RCMP on the understanding that they want us to indicate how we can decriminalize a man who is a first offence offender, so as not to give him a record. If I can get that out of the act, that is enough; and then continue with the research, because the evidence so far has been that the answer is that no one has an answer.

I came here today wanting to believe that there was something new here in the suggestion that we should legalize. Here we have Mr. McGrath saying, as I understand it, that the reason why the youngsters are at the drug is because they feel that I have the right to liquor and they should have the right to the drug. That is a hell of a reason for suggesting that we should legalize it, if I understood him correctly.

Mr. McGrath: In the absence of evidence that this is a dangerous drug. If you can establish that it is a dangerous drug, then legalization makes sense. But surely the legal principle has to apply in all situations. Nothing is declared illegal until such time that you can demonstrate that it is a dangerous act. Suspicions are not enough. That, surely, is a basic principle of law. In this case we maintain that there is no evidence, or at least insufficient evidence, that cannabis is a dangerous drug. In the light of that lack, youth is entitled to say, "Why is our preference for this drug being discriminated against, whereas other drugs, in some cases where there is clear evidence that they are dangerous, are legal?" They see this as an imposition from the older generation on their life style, if you want to use that term, and they transfer that resentment to a general attitude toward the law. To me, that is a legitimate position for them to take, always in the absence of evidence that it is a dangerous drug.

Senator Croll: When you say "evidence that it is a dangerous drug," it may not be dangerous to sniff it, but it certainly becomes dangerous after use. The Medical Association thinks there is some danger in it. After all, they are substantial people. The criminologists and police think there is some danger involved in the use of it. Do you think we should stand aside and, as a law body, say, "We give it approval"? Once we permit legalization, it means approval. Approval means a great number of things. Do you think we are justified in doing that?

Mr. McGrath: Yes, we do.

Senator Croll: On what basis?

Mr. McGrath: I can only repeat what I said before. Despite the evidence in the medical profession, as you said yourself, there is a considerable body of medical opinion in this country which takes the opposite stand.

Senator Croll: I said some, not "considerable".

Mr. McGrath: I will add the word "considerable". There are a great many medical people who do not agree with the position of the Medical Association. I am not qualified to have an opinion on the medical effects of this drug. As I read the evidence, for every bit of evidence adduced here that it is a dangerous drug, I can produce a counteracting statement. In view of the lack of evidence, I can only say again that I think we are unjustified, on the basis of legal principle, to make the thing illegal.

Senator Croll: If you were sitting here, and the Medical Association, the RCMP and others said what they have already said, you would feel at liberty to support legalization under those circumstances?

Mr. McGrath: I would. I cannot interpret your position. Obviously, you have to look at the weight of evidence which has been placed before you in this committee.

Senator Croll: Don't you?

Mr. McGrath: In my own opinion, yes, I would certainly legalize marihuana.

The Chairman: You are talking as a criminologist?

Mr. McGrath: Yes, and as a citizen.

Mr. Whitelaw: Senator Croll, would it not be fair to say that the objection of the police, such as the RCMP, is to the distribution of it, and the fact that it is in the hands of a criminal element? That is their main argument about marihuana, that it is just another drug which pushers are pushing, and so on, and this is part of the fight against crime which they are eternally waging; and marihuana is just one of the elements in all this drug scene? Is that not their approach? They are not saying that we find it dangerous, and so on. They are saying, "We want this kept criminal so that we can grab these pushers and put them away." That is the entire police approach.

Senator Prowse: That is over-simplifying it.

Senator Croll: That is not what they say. For 10 years we have had on the statute books one of the toughest laws in North America. At the end of 10 years we look at it and we find that we have made no headway. The police are not complaining about that. They have had a good law. But is it not time that we should make some changes? I came here hoping to get certain information. What is your view? How can you justify saying that in the present circumstances we ought to legalize it? The argument someone gave earlier was that we will be responsible for production and sale. The alcohol example was used. We do not produce alcohol. We sell it, which is a different thing entirely. What justification can you give? I thought you would talk about the record of those who have been convicted, the effect upon them, what had happened, what were the circumstances, and indicate that this is the wrong approach; but we have not got it from you.

Mr. Whitelaw: I have some more comment on that subject from Dr. Jayewardene. However, I would like to throw in a comment of my own. The first book I ever read, about 20 years ago, in the field of corrections, which was very much—to use your phrase, senator—over-simplified, was called “My Six Convicts.” It was not a very good study, but it made an interesting point about the opium drugs. Before it became a criminal offence in the United States to have possession of those drugs, the number of known addicts was relatively small. I have forgotten what the figures were. The minute it became a criminal offence, it became like bootlegging, a massive, pushing operation, to make addicts out of people in order to sell drugs; and the graph on the number of addicts went straight up from the time it became an illegal matter to have possession of it.

I want to come back to Bill’s point about young people. You have made some good points on that score, but you must look at it from the point of view of young people. To them this is legislation aimed at them, at their generation, and if we, as an older generation, wish to deal with these people on the basis of developing adults, with a good background, we have to indoctrinate them with a respect for the law, a feeling that they are part of the legal process, and that they have something to do with helping to prevent crime. If nothing else, a real study of the effect on youth of criminal legislation and having a criminal record is very important. Dr. Jayewardene conducted some experiments. It has been frequently argued that a young fellow starts off with a few puffs of pot, gets used to using it, and then graduates into the harder drugs, and so on. Dr. Jayewardene, you have done some experiments and research on that score. What is your comment on that?

Dr. Jayewardene: I do not think that if you start taking marihuana you will graduate into the harder drugs.

Senator Croll: You said you did not think so. Would you please stop there, doctor? I made a note that in Britain, where there is legalization of a sort, they have turned to heroin, and in Sweden they have turned to amphetamines. I am referring to those who got off marihuana. I just wanted you to know that I knew that.

Dr. Jayewardene: The position in Sweden and in Britain is not with those who have started with marihuana. It is rather that drugs have been prescribed by the medical profession in order to control what they thought was hypochondriac children—but who were not hypochondriac. This is one of the medical problems facing the medical profession in the Scandinavian countries, that is, the extent of the abuse of amphetamines by the medical profession. They are giving them, and they are addicting children who should not have been addicted. The children take amphetamines as a result of having started on marihuana. They become addicted to it, through the medical profession prescribing it.

Senator Prowse: They stole mum’s. When they deal with Scandinavian children, they also deal with apathetic housewives. The children steal mum’s.

Dr. Jayewardene: After the war there was a medical conference in Ottawa where most of the Swedish doctors made remarks about this. To come back to the comments Senator Croll made earlier, I think he is going on the assumption that as soon as you decriminalize or legalize, everyone is going to start something that was not done, and if you have a prohibition of it on the statute books no

one is going to do it. However, there is no law against biting your toenails in public, for example, but how many do so?

Senator Prowse: Who can reach their toenails?

Dr. Jayewardene: I think you and I cannot, but there are a lot of people who can. Leaving that aside, Senator Croll has just said that, having the toughest laws in the country, still we are unable to control it. So, in effect, the laws existing do not present an increase in the use or consumption of marihuana. Whether we have laws against it or whether we do not have laws against it, there is going to be an increase. What is the result of the law’s doing it? They are taking out of circulation from normal society a large number of people who may not have had any ill effects at all. They take marihuana; they get caught; it is the law; and then they are branded as criminals and are not permitted to give their proper contribution to society—because they have been branded as criminals, because we have a law on the books prohibiting something that almost everybody is going to do.

Senator Laird: Mr. Whitelaw, you used this term yourself—and I am sure you will agree with the proposition—that any law has to have public support if it is to work. We found out, in connection with that other drug which has been talked about, alcohol, that there is the problem of not having public support for a law we had. One of the things we have to combat in this committee is the public impression that this bill does legalize marihuana—in which event there will be a very substantial and decisive opposition to the bill if they think that is what it does. Keeping that in mind and acknowledging that perhaps—perhaps, only—philosophically your proposition is sound, we have to be pragmatists and make into law a bill somewhat like this which will get public support. If we go one step further, I am suggesting to you, than what we are doing now—that is, roughly, lowering the penalties for mere possession—are we not going to run into a wave of public resentment against this bill?

Mr. Whitelaw: Of course you are, because public opinion is very easy to whip up on these subjects. Take capital punishment and you see what big feelings are stirred up by various groups.

Senator Prowse: Please, let us not go into that.

Mr. Whitelaw: This is a matter which involves public education. They do not understand this. Only one side of the picture has been presented and that is why hearings such as this, where publicity is given to various opinions, have been so useful. It will take some considerable time to educate the people to acceptance of this sort of change.

I do not want to sound political, but I object to a statement in this regard that Premier Davis made. Asked whether he was in favour of legalization of marihuana, he said, “I don’t think public opinion is ready for it.” I was taught in the army that you do not lead your troops from the rear, that if you are going to take a position on principle and on fact, you take it and you go ahead and then you do the educating. Certainly you are going to be criticized and certainly there will be an uproar, but you have a lot of public education to do.

Senator Laird: Is there any sense in our trying to jam down the throats of the public a bill which they simply will not accept? How can we do that?

Mr. Whitelaw: I suggest that after it has been law for some time, say two or three years, it will be accepted.

Senator Laird: It is easy for you to say that, but we are the people responsible for saying whether this bill is good or not. We are deeply concerned about the attitude of the public already. They think we are going to legalize marihuana and we have to combat that continuously. I ask you, should we leave the bill as it is, but increase the proposed penalty for trafficking?

Senator Croll: It is light now. How much further can you go?

Senator Laird: No, no, it is not. Let us get this straight. Of course it is light in the present act, but not in this bill. Let us consider that. The provision in the bill is for imprisonment for up to ten years.

Mr. Whitelaw: The problem with trafficking is this—Senator Neiman and I both have children in the same area of school and we know what they run into—that this trafficking, so-called, is done in the final analysis by the youngsters themselves. The real trafficking is organized by the criminal elements in the same way that trafficking is done in all the other drugs. When you get down to the actual pushing and even the control of a whole area, it is teenagers and those younger who are doing it.

Senator Prowse: Where do they get it?

Mr. Whitelaw: They get it from further up. If you say in the bill just "trafficking," what is the definition of that word? If you whack them for trafficking, what are you going to do? If you are going to catch youngsters of 12 and 14 years of age and whack them for trafficking, you are not going to help them at all. Everybody agrees that the real villains are the criminal element, the big time pushers. Every once in a while the RCMP will make a big haul and bring in a lot of pushers, and we are all in favour of putting them away. But I do not think to say just "trafficking" is the answer to it.

Senator Laird: Perhaps we should divide "trafficking" up into two different categories, one to cover the kid who was doing a little bit of this sort of thing, and the other to cover the major commercial trafficker.

Senator Prowse: Or the agent.

Senator Laird: Or the agent, yes.

Mr. Whitelaw: It might be helpful.

Senator Langlois: These are maximum sentences which are in the bill; the discretion belongs to the court.

Mr. Whitlaw: As you know, the courts are very strongly anti-trafficking. The defence to simple possession is, "Your honour, this is only simple possession, not a question of trafficking." When trafficking is the charge, the crown attorney gets very hard and demands the highest sentence he can get.

Senator Laird: On the matter of simple possession and trying to remove as much of the penalty as possible for a youngster found in possession of one or two joints, we have had suggestions that any conviction for mere possession should not be a matter of a criminal record. That, in some ways, is quite satisfactory, and I will not go into it now. I would like your reaction to the suggestion we have had here, that the record be expunged automatically at the

end of a year or two years, unless the convicted person repeats his offence. What would you think of that?

Mr. Whitelaw: Well, generally speaking, I am all in favour of expunging records after a certain period of time; and in certain areas there are moves to do this sort of thing. This goes so far as to suggest that it should even be permitted to a person who has received a pardon or who has his record expunged in some manner to answer "no" to a question on an employment application form as to whether he has ever been convicted of an offence. So I am all in favour of that. Furthermore, you cannot believe in rehabilitation if you believe in the retention of records indefinitely for everybody. At the same time, I still do not think that you should have a record—it may be a question of age, I don't know—because the mere fact that a child has a record at the age of 16 is, I think, quite a psychological barrier to him.

Mr. McGrath: I certainly would favour doing all you can to erase records. However, it is a difficult thing to accomplish because to get all these police records withdrawn is not easy; to have neighbours forget is not easy. You certainly could have a provision that a person, in filling an application for employment, could say that he has no record, but I am a little lost as to whether that is in fact a good thing, for the simple reason that it is still a form of deception, is it not?

Senator Prowse: Not really.

Mr. Whitlaw: But if the question is, "Have you ever been convicted of a criminal offence?" and if he answers, "No", is there not an element of deception? I think there is.

Mr. McGrath: I would support the idea.

Senator Laird: This question is directed to any one of you, but particularly Dr. Jayewardene might like to comment on this. Would you agree that marihuana does not do you any good?

Dr. Jayewardene: I don't know. I cannot really say yes or no because I have not taken marihuana myself.

Senator Prowse: Why not?

Dr. Jayewardene: I do not have the inclination to try it out, and I cannot say whether it does any good or does any harm.

Senator Laird: You have been making quite a proposition of its doing no harm; but do you maintain that it does no harm if it is taken in excessive quantities?

Dr. Jayewardene: I said the evidence points out that it does no harm. I did not say that it does no harm. I said that the evidence is in that direction.

Senator Laird: But if used excessively, what is your view on that?

Dr. Jayewardene: Anything that is used excessively does harm.

Senator Laird: If you go that far, could I put this parallel to you, as I have done once before? Let us take the case of comparing a dog who is normally a nice quiet animal but occasionally may become a mad dog and a menace. This is true of alcohol and it is true of marihuana. Therefore, why let two potential mad dogs loose on the community?

Senator Croll: I object to the alcohol part!

Senator Laird: The reason he objects is that it has been known that some senators have resorted to that drug.

Dr. Jayewardene: As far as the mad dog is concerned, he is mad once and that is it for him. But as far as the fellow who becomes mad drunk with alcohol is concerned, it is a temporary phase and he comes back to being a productive member of society after his intoxication has come to an end. So I do not know if your analogy holds true. Are you really letting a mad dog on to the public when you say you have allowed an individual to take alcohol or to smoke marihuana?

Senator Laird: You are releasing another potential mad dog. That is what I am suggesting.

Mr. Whitelaw: Dr. Jayewardene is really here to give evidence on scientific findings.

Senator Laird: I had better quit then.

Mr. Whitelaw: Could I make a couple of comments on that? One relates to this business of the public attitude, and I am not at all sure what the public attitude in these circumstances would be. I know that more vocal groups are making a strong stand against it, but when we started this exercise ourselves I felt it was absolutely impossible to get this proposal approved by our organization, and I was wrong. In connection with this I have met with a number of groups, and I have been absolutely amazed at the number of people who would support legalization. If you were to take a referendum in this country, I am not at all sure that you would get an adverse reaction. Of course, there is an age question here.

My second point relates to your comment about increasing the penalties for trafficking while decreasing the penalties for use. These run contrary to each other. If you decrease the penalties for use, you are increasing the market and therefore the temptation. To decrease the penalties, in itself, to my mind, is a very questionable procedure unless you are going to supply the drug, because otherwise you are simply inviting organized crime in to fill a still bigger market.

Senator Neiman: On the same general theme of how we as a legislative body can treat of this situation, I believe that we should not be as pessimistic in some areas as has been indicated here today in accepting that the public would not accept some changes in our law. My experience has been—even in talking about it since these hearings began and explaining to people some of the things which I have learned from the witnesses who have been here—that once you sit and talk to somebody for half an hour about the subject and give them some background about what you are trying to do, there seems to be certainly an almost unanimous feeling that for simple possession for young offenders there should not be a criminal record. I must say that I have not got to the stage where I have had much comment to the effect that it should be legalized. There, I think, you are running into a real problem, one that is far greater than simply trying to consider the problem of decriminalizing simple possession. I agree that both of them do not make sense—where we retain penalties for trafficking and other offences connected with the drug. But as far as legalization is concerned, I do not see how you can deal with this problem. Mr. Whitelaw, I think, tossed it off rather casually with a couple of sentences that we might have some problems along the United States

border. Well my comment on that is that we certainly would have problems on the United States border and any other border, and I do not think that there is any way at this time that we could really, even if we wanted to, and even if the public were ready for it, go that far with legalization, and I do not believe that you can suggest that any of our law-enforcement officers could suggest nor could anybody else suggest how we could legalize this drug unless it were done right across the United States border. I feel that from a rational point of view we have to back up a step and go back and look at dispensing with criminal records for simple possession. My comment there is that for trafficking the suggestion made by Senator Laird, that perhaps we could divide the trafficking offences by age and not deal as harshly with younger people, is in fact what is being done in our courts today. On the other hand I have heard from Members of Parliament who know of cases in their own ridings—and here I am thinking of some of our border cities like Niagara Falls—where young people and university people are making, so they say, \$15,000 to \$20,000 a year trafficking. I consider that to be trafficking, whether they belong to the mafia or are doing it on their own. It is my opinion that that must be dealt with.

The Chairman: Senator Neiman, I am sorry to interrupt you, but you should come to your question. Your time is running out.

Senator Neiman: I am sorry. I was probably making a speech, because I really do not think that unless you can put forward reasonable suggestions to us as to how to legalize this at the border, we can consider your major recommendation.

Mr. McGrath: I agree with you that there would be a very great problem. There was certainly a serious enough one during the twenties and thirties in connection with rum running, and it might be repeated in this case. Bear in mind, however, that in a sense it is a problem in reverse. I mean that the problem may rest on the United States authorities rather than ours, since the drug has been going in that direction.

Another fear one hears expressed is that undesirable drug users—not all drug users now—might come to Canada if the drug were readily available here. This situation has been experienced in some of the Near Eastern countries. I would not play this problem down, and I consider it to be very serious, but I have no solution to offer. You have probably heard evidence of the move south of the border, not to legalize but to reduce penalties. If that movement continues there, it would make the situation easier.

Senator Asselin: As stated by other senators this morning, we face a tough problem. We have learned during the hearings of this committee that the number of users of marihuana has considerably increased during the past 10 years. If we were to legalize the drug, do you think the number of users would decrease?

Dr. Jayewardene: I do not believe the number will decrease. In my opinion the trend will continue whether the drug is legalized or not. The same trend will continue whatever we do.

Senator Asselin: Yes, but I believe Mr. Whitelaw, in his opening remarks this morning, said you wish to legalize marihuana in order to eliminate the profits of members of

the underworld. Is that your main objective in connection with the legalization of marihuana?

Mr. Whitelaw: No; that was one in a series or half a dozen I gave. First of all, if the profit motive were removed from anything it would destroy a great deal of initiative in pushing it. One of the problems with drugs is to maintain purity standards. At least, if the drug were sold legally there would be some control under the provisions of the Food and Drugs Act of the standards of quality. If any profits were realized, we suggest that they could be used for a good purpose, rather than going into someone's pocket.

However, with respect to the question of the number of users, I believe Dr. Jayewardene has made the point that it depends upon other trends, of which the number of pushers and the profit motive are two. The mood of the country is also one. We must recognize, in my opinion, that a great deal of the feeling of revolt started in the United States with the Vietnam war and the anti-establishment attitude. Smoking pot then became a method of thumbing the nose at society, to some degree. We must therefore consider other aspects than the profit motive and the type of children we are bringing up these days.

Senator Asselin: Should we include in the legislation a deterrent to prevent the use of it and make it a crime?

Mr. Whitelaw: In my opinion it is a fallacy to say that we can successfully legislate against anything. Anyone who has seen criminal law in action I am sure will agree that its bounds are very difficult to expand. As I said earlier, the public attitude has a great deal to do with it and what the public will accept, or condemn, is something else.

As Mr. McGrath has pointed out, perhaps this feeling against marihuana is not as deep as would appear from hearing the vocal groups speak against it. I am not being terribly helpful, but it is not an area in which I or anyone else can pronounce definitively, because the evidence is not all in and we have not been working at it hard enough and long enough. When Senator Laird referred to the public attitude, I restrained myself from giving a commercial, but I shall do it now. That is, if Treasury Board would only relax its attitude toward our grant perhaps we could do a better job in public education than has been possible so far.

Senator Asselin: Has your association made studies of the attitude in other countries?

Mr. Whitelaw: Again, I must say that our association is limited in its activities. At the moment we rely mainly upon the experience of our members and those experts, such as Dr. Jayewardene who is with us this morning, we can bring in. We do not have the research funds for carrying out such activities. Under our present arrangement with the Canada Council we exist on a budget of approximately \$130,000 effectively. We wish at the outset to have a budget of \$300,000, plus, which would give us room to increase our staff, which is only effectively two, Dr. Jayewardene and Mr. McGrath. They are very highly trained individuals, but unless we have more resources, these two are spread too thin.

Senator McGrand: You propose that the government sell marihuana and use the profits to protect the public from the evils of marihuana and to rehabilitate those who have been affected seriously by it. The same has been done

with respect to alcohol. How successful has the campaign against alcohol been? Would you be prepared to settle for the level of success against marihuana which has been experienced in the field of alcohol?

Mr. Whitelaw: Since I am always shooting from the hip, I will start the answer and ask Mr. McGrath to finish. In so far as the campaign against alcohol is concerned, as far as I can see right now it has only really begun, although it has been going for a while. The types of evidence coming forward in connection with the misuse of alcohol and the wide net they are casting as to who are alcoholics are so different from previous concepts that it is a whole new ball game. Therefore we cannot really place a success level as far as alcohol is concerned.

In so far as using the profits of the sale of a drug such as marihuana is concerned, we did not confine our opinion in that respect merely to addicts of marihuana, if such they be, but to addiction generally. We believe that it should go to research grants for any type of addiction, so there is really no limitation on our suggestion.

Mr. McGrath: do you have any other remarks in this connection?

Mr. McGrath: No, not really. It is very difficult to assess the success of the alcohol program. Would I be satisfied with it? No, I would not; I am not happy with the alcohol situation either, but we should not assume from that that the program is not successful. Perhaps it is. Frankly, I do not know. It is a question here, it seems to me, of which would be better—the present situation and the situation which is developing, or something else. We have to recognize the rapidly increasing use of cannabis. I think Professor Jayewardene is correct in saying that it will continue whether or not we legalize it. The effect of this new legislation, where penalties for both the use and trafficking are reduced, will, of course, spur that thing still further. It is a question of whether we are going to go down the road of uncontrolled use or attempt to develop some controls without any naive assumptions. We shall, of course, have trouble.

Senator McGrand: A distinguished psychiatrist told this committee that the imposition of severe penalties had not stopped the use and sale of marihuana. I believe that to be so. But criminologists would say that penalties of any type do not stop an abuse of that kind.

Dr. Jayewardene: The first thing is, does penalty have a deterrent effect? That is the question you are asking. Penalty does not have a deterrent effect. Studies have shown that. But, at the same time, people believe that penalties do have a deterrent effect, not on them but on someone else, so for their personal protection they want penalties for someone else. The effect of the penalty does not prevent them from doing something.

Senator Fergusson: I would like to ask a question of Mr. Whitelaw. Do you think that the legalization of cannabis would increase or decrease its use?

Mr. Whitelaw: I indicated before that it would remain at the same level. I believe it was Senator Asselin who said it was on an increasing curve. I think it will continue on an increasing curve. Whether you legalize it or not, I do not think it has an effect on the number of people who will use it. It is the effect it has on them and on the public.

Senator Fergusson: You propose to legalize marihuana, and I gathered, from what Mr. McGrath said, that you

would set an age below which they could not purchase it. From the evidence we have had from a great many of the users, it would be below what I presume would be the age that would be set. How would this be helpful to them? There will still be many traffickers who will aim their efforts at that age group. Would legalization help that group?

Mr. Whitelaw: So far as that age group is concerned, it is my opinion that nothing will help that group except the education process. The education of parents, education in the schools, and so on, is necessary, to help control that situation. In my opinion, the only thing it would do to help that group is to take away the sort of dare—that you are going to go to jail if you take this sort of thing, and so on. Presumably, a child of 12, even though it is legal and he cannot purchase it, just as he cannot purchase a bottle of liquor, will still do it on some kind of a dare basis; but I do not think that the thrill is all that great, and the penalty is not all that great. He will be treated, for example, in the juvenile court as a juvenile offender.

Senator Prowse: With no record.

Mr. Whitelaw: Yes, that is right. There will be no record. That is a different thing from going in on a criminal offence basis, and so on. I do not think that children start at, say, the age of 12 and work their way up, particularly. The experience of many parents, through home and school organizations, study groups, and so on, is that the child will experiment with it and then drop it. I am now told that with the older teenagers—I am talking about the 14- and 15-year olds—they are not interested, and they switch to alcohol. There has been a heavy switch to alcohol among the children. They will try marihuana, but on a steady diet it is alcohol, because that is what they see their parents using.

Senator Fergusson: Perhaps I should not ask this question. Mr. Whitelaw, I think you said the directors were two to one in favour of your recommendation.

Mr. Whitelaw: Yes. This was the final vote. We had had, I think, three votes before that over a period of a year, in which we had ended up virtually in a deadlock.

Senator Fergusson: That is what I have been told. That is why I was surprised when you said two to one.

Mr. Whitelaw: On the final vote, of those who voted, it was two to one.

Senator Fergusson: What proportion voted?

Mr. Whitelaw: There were 42 members of the board present out of 62 or 63.

Senator Neiman: Two-thirds.

Senator Prowse: Was there normal notice of the meeting?

Mr. Whitelaw: Normal notice of a special general meeting for the purpose of.

Senator Robichaud: It seems that the discussion this morning has centred around marihuana, although there are various forms of drugs. The approach taken by the Canadian Bar Association is that it is restricted to the particular type of drug called marihuana—or does it go beyond that? I am talking about the legalization of marihuana.

The Chairman: You mean the criminology association.

Senator Robichaud: Yes, that is right.

Mr. Whitelaw: We are talking only about marihuana at the moment—the cannabis drugs generally. Marihuana is the issue. That is the popular one.

Senator Croll: When you spoke of production and marketing, did you have in mind the federal government, the provincial government, a combination of both, or whom?

Mr. Whitelaw: The closest analogy you could make, senator, is to alcohol. It would have to be something like the provincial liquor boards.

Senator Croll: For distribution?

Mr. Whitelaw: Yes. As to production, I do not think we really got into that. It would be under the supervision of the food and drugs administration; but where or how it should be done, we have not gone into that.

Senator Fergusson: Production could be done in someone's back yard.

Mr. Whitelaw: I realize that, and you can buy a book in any book store explaining how to grow marihuana.

Senator Croll: Let me get back to education. As I recall it, the temperance unions in this country operated and still operate to a certain extent. They were pretty strong in their day. They were the enemies of alcohol—booze and everything else. On top of that, we had those who were opposed to smoking. Governments throughout the world, all health authorities, were opposed to it. Yet there is more smoking and drinking in the world today. Why do you ask us to legalize it? Those were all legal. Why do you ask us to go against the tide? It has not proved to be successful up until now.

Mr. Whitelaw: You are talking about alcohol and cigarettes, which are not illegal.

Senator Croll: You are suggesting that the way to deal with pot is to educate. That is what they were trying to do—to educate and agitate. You are suggesting the same thing. I am indicating to you that they were not successful.

Mr. Whitelaw: I am not suggesting that there be national advertising programs, as there are for cigarettes and alcohol.

Senator Prowse: They are more successful than you think.

Senator Croll: Mr. McGrath said—and here we have a difference of opinion, “If we gave the Canadian public an opportunity to express themselves, you would be surprised to find how much public opinion there would be in favour of legalizing the drug.” Did I understand him to say that?

Mr. McGrath: I think I added the word “might”.

Senator Croll: What do you think? I was surprised at your answer, because my own impression is that the Canadian public look upon drugs as something dirty and filthy and they do not want to have to deal with it in any way, or give effect to any bill weakening any of the restrictions and penalties that are there at present.

Mr. McGrath: In some drugs like heroin, I suspect that the group under 30 years of age would support that position. I think there are many parents who, not that they like children smoking marihuana, are normally faced with that

problem themselves; but they are facing the additional problems that their child might get involved with the law, and I think there may be a lot of young parents, particularly, who would welcome this additional relief of pressure. I have not taken a referendum of the Canadian public but I have been surprised recently, in meeting with various organizations. I never thought our group would support legalization. I talked with many groups in recent years on this point and was surprised—and this, I admit, is only a small sample of the Canadian public.

Senator Prowse: A quite specialized sample.

Mr. McGrath: It is a specialized sample, that is true, but our board is made up of a pretty hard-headed bunch of people, not the type who are revolutionaries.

Senator Croll: I gave you a chance to tell us who comprised your board, and you did not. You said you had 60 members.

Mr. McGrath: We would be glad to send you a list.

Senator Prowse: You know, senator, they are an organization that worked for us for four years.

Senator Croll: I know the board.

Senator Prowse: Yes, you know the board, and you know it is perfectly competent in its own area, and that is the best to hope for.

Senator Croll: How many here know the board?

Senator Neiman: Everyone knows it.

Senator Croll: Everyone here? I have known it a long time, but I thought that its membership ought to go on the record.

Senator Prowse: What about the members?

Senator Croll: As far as I am concerned, I have known the membership of the board for years but I thought it ought to go on the record. I was not aware that every member of this committee knew it.

Senator Prowse: Mr. Chairman, I move that a letter be sent to the chairman of our committee with a list of the members of the board.

Senator Fergusson: I think the names should be put in the record, because these reports are read widely. There are many people who will read them who will not know how the board is made up.

The Chairman: I am sure it would be easy for Mr. McGrath to give our clerk a list of the members of the board.

(See Appendix "A")

Senator Prowse: You say penalties do not deter. Have you ever had the experience of going on a long motor trip and getting into an area where everybody is obeying the speed limit because somewhere at the head, when you are trying to pass, you are going to run into a police cruiser? Then you get into another area where you are striving to keep to the speed limit and everybody is passing you—not just the Volkswagens—and you know perfectly well that the police are out to lunch. It is the certainty of conviction that this carries with it that makes it a deterrent. You are not going to argue that there is no such thing as a deterrent, because it cannot be an acceptable idea.

Dr. Jayewardene: It is not the principle of getting away; it is the certainty of getting caught and having to pay.

Senator Prowse: We will leave that, because that was one of the points. I was one of those in our legislature who went across the country and then lowered the drinking age to 18, because we were having a lot of trouble with 18- and 19-year olds drinking. We thought that this was the way they could indulge their sense of adventure without losing their immortal souls. So we did them a favour, and did ourselves a favour, by reducing the age to 18 and saying that they would then have to accept the responsibility of being a grownup. Do you recall that? You know, today the drinking problem with respect to young people is not at the age of 17 or 18. It is at the age of 14 or 15, and even younger. All we have done is lowered the floor, if I can put it that way. Is there not a danger that that is what we are doing with respect to marihuana, if we legalize its use? We are going to invite more people to consider that it is all right to use it. The kid who is trying to persuade another kid to try it will be able to say, "Look, even those old fogies in the Senate say it is safe to use!" Can you not just hear the argument right now? Do you not agree with me on that?

Dr. Jayewardene: I do not know whether that is right. It may be that the visibility has simply increased. People tend to study the age level just below the legal age. So as soon as you reduce the legal age from 21 to 18, then the concentration is on those below 18 and not above 18. They are going to study how many people over 16 are using it.

Senator Prowse: You do not have to study it; you just have to look around.

Dr. Jayewardene: What I am saying is that as soon as you reduce the age limit, then attention is focused on the next lower group. So it is on those who are 16 and 17 who are using alcohol. But when the age limit was above 18 they were not visible because attention was focused on the 18-year olds.

Senator Prowse: Would you agree that if we were to legalize the use of marihuana without making adequate provisions for its supply, all we would be doing would be ensuring that the bad elements of trafficking and so on would have a perfect situation in which to flourish?

Dr. Jayewardene: I agree.

Senator Prowse: You cannot have one without the other.

Dr. Jayewardene: No.

Senator Prowse: One of the leading experts in the field of marihuana—not simply on its effects—is Dr. Carleton Turner. When he was before us he told us that different percentages of THC will be derived from the marihuana plant depending on the time at which the plant is harvested. For example, if the plant is harvested at two o'clock in the morning it will produce 6 per cent THC; at 6 o'clock in the morning it produces 3 per cent; at 2 o'clock in the afternoon it produces .05 per cent. It would seem to me that the only way in which we would have any control or knowledge of what we were doing would be to have production under controlled circumstances, as is the case with liquor, in which the alcohol content is, I think, 70 per cent by volume for hard liquor, around 20 per cent for wine and, say, 4, 5 or 6 per cent in beer.

I think we would have to sell marihuana oil if we were going to have any degree of certainty, and we would be running into tremendous technical problems in providing

any kind of legal source of supply for this drug, because if the government sold it, it would have to warrant its quality.

Dr. Jayewardene: The potency of the marihuana does depend upon such things as humidity and temperature. That is true. I suppose that if the active ingredient were sold in the form of oil it would present more danger than if the crude product were sold, because the crude product would contain a minimal amount of the active ingredient and would also contain other substances which might have the effect of counteracting the THC. We do not know that as yet.

Senator Prowse: Are you saying that the associated substances which have not been identified yet may cause some of the problems which worry you?

Mr. McGrath: We are saying that if the government cannot control the quality or the strength of the product, just imagine what is being offered on the market now.

Senator Prowse: That is true, but if the government is going to do it, then I am just asking you to consider whether you would recommend that the government should seriously consider taking the time to try to get into this business which basically they are going to run. That is the first problem you are going to have. Mind you, it might help to solve the unemployment problem.

The Chairman: I think your time has expired, Senator Prowse. A last question from Senator Godfrey.

Senator Godfrey: Well, Mr. Chairman, it is not really a question. I think the evidence of Dr. Turner went a little further. It was to the effect that you could have exactly the same percentage of THC but from different plants with completely different effects so that you could not control the quality; and they do not know why that is so.

The Chairman: Well, I want to thank our witnesses on behalf of the committee. We will now adjourn until 2 o'clock.

The committee adjourned until 2 p.m.

The committee resumed at 2.00 p.m.

The Chairman: Honourable senators, the first witness this afternoon is Mr. J. Peter Stein, Chairman of the Alcohol and Drug Commission of British Columbia. Mr. Stein can identify himself. He was a member of the Le Dain commission. Am I right on that, Mr. Stein?

Mr. J. Peter Stein, Chairman, Alcohol and Drug Commission of British Columbia: That is correct.

The Chairman: Mr. Stein has no brief. He is just going to make some statements, and will then await questions.

Senator Asselin: Mr. Chairman, you said he was a member of the Le Dain commission?

The Chairman: Yes.

Senator Asselin: In what capacity?

The Chairman: He was a member. You were one of the five members, were you not, Mr. Stein?

Mr. Stein: Yes. I was one of the members who took the majority position. One of the five members.

The Chairman: Go ahead, Mr. Stein. You might give some of your qualifications.

Senator Asselin: On a point of order, Mr. Chairman, I should like to point out that I think it was decided at the beginning of our hearings that no members of the Le Dain Commission would appear before the committee.

The Chairman: Mr. Stein is not appearing as a member of the Le Dain Commission. He is appearing as the chairman of the Alcohol and Drug Commission of British Columbia.

Senator Godfrey: But, Mr. Chairman, we never made any such decision.

Senator Prowse: I am sure there would be a distinction between them.

Senator Godfrey: I just want to make sure I am not misunderstanding anything, Mr. Chairman.

The Chairman: It was left to me to talk to Mr. Le Dain, which I did, because somebody wanted him to be a witness. He said he had nothing new to add to his report, and that therefore he would not appear.

Senator Prowse: And that was the total of the conversation?

The Chairman: Yes. Would you go ahead, Mr. Stein?

Mr. Stein: Well, Mr. Chairman, actually I have nothing to add to the report either. For that reason I do not intend to present you with a brief. I was called by Senator Neiman in my present capacity as chairman of the British Columbia Alcohol and Drug Commission, which body was created by the present government to develop the educational and rehabilitation services for drug users of all kinds in British Columbia. It was my understanding that there was some interest on the part of this committee in pursuing some aspects of your deliberations with me in that context.

The Chairman: That is right.

Mr. Stein: It is for that reason that I have come, and I have no other comment to make as an opening statement.

Senator Godfrey: You will not tell us what you are doing? Do we have to get it out of you by questions?

Mr. Stein: I do not mean to be secretive at all. The position which I presently have as the chairman of the Alcohol and Drug Commission is directed towards the development of all of the rehabilitation services available in the province for alcohol, heroin, barbiturates, or any kind of drug dependency, and in that capacity we are responsible for the training of people who are working in the rehabilitation field, for the funding of the organization which are providing services, and for the distribution of any and all of the information that is made available throughout the province in the field of chemical dependency.

Senator Neiman: Mr. Stein, perhaps you will recall that when I spoke to you I indicated that our committee would be most interested in what you had to say because of the concern of many of the people on the West Coast about the extremely high incidence there of use of drugs of all types. What our committee would be interested in is your personal experience in so far as the marihuana situation is concerned, and how you feel this relates to the total drug

picture. We would like to know whether you feel we are going in the right direction, whether we are going far enough, whether we are going too far, whether you approve of penal sanctions for the use of drugs, whether you think this is going to be any use in meeting this problem, and so on, totally in relation to your experience on the West Coast, and in terms of how you see the scene on the West Coast.

Mr. Stein: My views on the role of criminal law, as I said in my first sentence, remain unchanged from the time of the report to which I was a signatory. That is to say, I believe that the use of a possessional offence in this particular area is not warranted. Many reasons are given for this in the report. Those of you who have a copy of it know it is very lengthy, and I do not intend to repeat those reasons to you here.

My two years in British Columbia as the chairman of the B. C. Alcohol and Drug Commission have convinced me that the issues regarding criminal penalties are, in some ways, at the root of the difficulty that people seem to have in developing personally responsible behaviour regarding the use of all chemicals. In other words, I think that as long as reliance on means for protecting us from the possible abuses of chemicals appears to be placed within the context of the criminal law, the danger continues to exist that we can delude ourselves—both parent and youngster—that in some way criminal sanctions can protect us from irresponsible drug-taking behaviour.

I think the most significant aspect of the proposal before you is the direction which it implies, that criminal sanctions are of limited value in dealing with behaviour that is directed towards drug taking. I think it is crucial that the steps that this law implies be taken, even though it falls short of my own personal recommendation, which is the abolition of the possessional offence. I think it is crucial because the confusion in the minds of the public to the effect that by moving away from a criminal penalty we are approving or sanctioning an act of this type is still very much in the air. In other words, as I see it, there is a tremendous apprehension that by moving away from the criminal penalty the government is suggesting that this is an activity that they endorse, or that this is an activity which is safe.

As I see it, neither of those two things is implied in this law. Personally, I do not think it would be wise to imply that the activity of taking cannabis is a safe activity. I would not personally be in favour of the notion that we would appear to sanction the use of the drug.

There are other examples, and I am sure you are aware of them, of changes in the Criminal Code—for example the laws regarding homosexuality, which is a recent and, I think, pertinent example—and which in no way, were to be taken as an indication of the state's approval or endorsement of the activities. It was, rather, a recognition that criminal penalties were not useful in this area.

The second point I would like to make as a person representing the West Coast of Canada is that the problems which British Columbians have in the area of chemical dependency have been, and remain, and as far as I can see will continue to be, primarily related to the enormous costs involved in alcohol abuse. This is not to say that abuse of chemicals such as cannabis or heroin are not also serious problems. The experience which we have had so far, in the two years we have had the B. C. Alcohol and Drug Commission, with persons who are suffering from

dysfunction on a daily basis due to continued use of chemicals, indicates that not only is alcohol the prime drug of abuse, but that the majority of persons who come and seek help because of chemical difficulties are abusing a whole range of drugs, and so it has become much more useful to talk about multi-drug chemical dependency. Alcohol abusers are usually taking other chemicals, as you know. Heroin users are usually involved in other chemicals and, similarly, when persons are chronic and daily users of cannabis or hashish they are often involved in some other chemical.

My other point, after which I will rest for questions related to that, is that it appears to me that in British Columbia there has been in the past year a recognition on the part of both the Department of the Attorney General of the province and law enforcement in general that the focal point of their attack on this problem must be directed toward that aspect of trafficking which is clearly related to criminal again at a very significant level. For that reason there has been a very heavy emphasis at all levels of law enforcement focusing on what is known euphemistically as the big time trafficker. In my opinion this is appropriate. The commission of which I am the chairman has in the rehabilitation area emphasized the necessity to make available a comprehensive voluntary network of services for those who are seeking help, regardless of the kind of chemical that they are abusing. Two years ago there was no indication of that kind of comprehensive network of services.

A comprehensive network of services for us implies three simple kinds of examples: It means that there must be a dry-out or detoxification resource available throughout the province; there must be counselling services; and there must be residential treatment services for all kinds of chemical dependency. It has taken a while, but we have been working slowly and carefully to develop those three types of fundamental services and have been at great pains to integrate them into the health and welfare structure rather than continue to have a separate type of organization on the periphery of those health services that deals only with a heroin or alcohol user. We have put the detoxification counselling or residential care facilities into the hospitals, into what we know in British Columbia as our Community Health and Welfare Boards. Due to this the stigma for the chemical dependent does not continue because he must go to some special, separate, isolated facility to obtain help.

For example, as you know, one of the services available to a heroin dependent is methadone. We are working towards the goal of moving the methadone facilities into and within the health service structure, rather than keeping them as a separate entity. In my personal opinion this is a very important factor, because the problems of those with chemical dependency, as I am sure you probably know after the days and weeks of hearings you have conducted, are not drug problems, but problems of learning how to responsibly make choices which will not lead to either physical or social disability. The drug taking is the external symptom of this. For this reason the services available to the chemical dependent, the package we put them in, the label that he feels he must put on himself to get that help, is as important as the help we make available. It makes a great deal of difference, in my opinion, for a heroin addict to be able to go to a health centre for assistance rather than to a special methadone clinic. I said I did not have anything to say, but I could talk for hours.

These are some of the aspects in which we are involved in British Columbia.

Senator Prowse: I gather, then, that the existing legislation, as it goes part way, meets with your approval to that extent?

Mr. Stein: To that extent, yes.

Senator Prowse: In respect of one aspect which worries us, can you discern a possibility of how we could go further without providing a source of the drug? In other words, if possession were made legal how would this be handled?

Mr. Stein: Why do you have to provide a source of the drug?

Senator Prowse: How would they obtain it, except from a legal outlet?

Mr. Stein: As I understand it, there is no one—I should not say there is no member of this committee in favour of making the drug available, but assuming that is not your goal at this time, nor the goal of the legislation, I see that as two separate matters, related, certainly. However, if people wish to behave in what I would consider to be a potentially foolish and reckless fashion, that is to say by experimenting with something about which we are not yet able to determine the extent of potential harm, there is probably little we can do about it. We can, though, do something with respect to the sanction in which we are presently involved in meeting out to less than 1 per cent of those involved in such behaviour. I frankly believe that the notion of proceeding at this time based on our present knowledge around the sanctions related to the possession offence is sufficiently clear-cut that a move in that direction is possible and appropriate without appearing to be inconsistent, because we would not be making the drug available to the user. There is no intent in this law, as I understand it, to sanction the use of cannabis, or make it available.

Senator Prowse: That is correct.

Mr. Stein: There is, rather, an intent to move away from a sanction that has shown itself to be of very limited value and, frankly, worse, at a practical level has created a great amount, as we all know, of cynicism and, in terms of police work itself and this is my own opinion, a large degree of side issue on which they focus.

Senator Prowse: In other words, the attempts to enforce the law as it presently stands probably result in more social and individual damage than the use of the drug we are concerned with, cannabis, has itself as far as we know at the present time?

Mr. Stein: By way of answering that, I will just digress for one moment and say that in my early experience in the social welfare field I was employed by the John Howard Society of British Columbia and had three years' experience as a probation officer. During those six years in the corrections field I came to the conclusion that the most serious penalty that the state can impose is a criminal penalty. It is the most serious and the most critical decision that the state takes, to impose a criminal sanction on a type of behaviour, because it is permanent.

Senator Croll: Do you mean a record?

Mr. Stein: I mean a record. When the state decides to describe behaviour as criminal it is the most serious delib-

eration that it takes, in my opinion, and it should be taken with that kind of recognition. There is no question in my mind that the stigma that accrues to an individual for the rest of his life from having been found guilty of a criminal offence leaves a permanent scar, one that people can learn to cope with. I have never been very impressed with the proposals that have been made in the last five years, or more, or less, but it is around that period of time, to have a process after the fact which will remove the criminal penalty scar or the record. I vividly recall the attitudes of a number of people on parole who had been clean for 10 years, and who were in the process of applying for what was then the National Parole Board's service procedure for getting a clean record. One chap put it very bluntly. He said that going through that process only reinforced the feeling one has as to the fact that such individuals are forever stigmatized.

I realize that the notion that it would become automatic might make some difference, but I do not think it makes enough difference. What we know about the social and physical effects of branding someone with a criminal record for certain types of behaviour far outweigh the known effects of probably any drug, in my personal opinion.

Senator Croll: How far do you carry this, the first offence, second offence, third offence?

Mr. Stein: My views about a possession offence in this particular area are that there should be none.

Senator Croll: At any stage?

Mr. Stein: It is set out in the Cannabis Report; it has been there for two years. That is my view, so I do not have the problem personally as to what we do in the case of a second offence or a third offence, and so forth. I do not think there should be the offence of possession at all.

Senator Croll: I got the impression that you connected social problems with drug problems. Do you mean that obliquely, or do you think one affects the other?

Mr. Stein: My personal view is that when a person's consumption of drugs is sufficient in quantity and on a daily basis to cause him to come to our attention, it is usually because he is having difficulties in some social area, either in his job, in terms of his involvement with criminal activities, or his physical health, and I think that the concerns that we have with problems related to drug use are usually, if we examine them carefully enough, based on our concern for social and physical kinds of dysfunctioning.

Senator Croll: At the top as well as at the bottom.

Mr. Stein: Yes. I must say, even after what, for me, has been almost seven years of being preoccupied with this particular subject, I find I feel a sense of frustration and even sadness over the continued unwillingness and inability of the majority of Canadians to come to terms with what they are really concerned about when they get preoccupied with this business of drug taking. I say I do not think the majority have come to terms with it because of the continued evidence regarding the excessive and abysmal failure on the part of the Canadian public to utilize and use alcohol in a responsible manner.

I know you did not call me here to talk about that, but I have to reiterate it. When anyone is confronted with this question of cannabis, you have to peel back the onion.

What is it they are really worried about? They are worried about the kids. They are not worried about anybody else. That is how it should be. I have five children and I have parental concern about my children. I think that is understandable. But when we start to look at the question of adult modelling, role modelling—and it has become a cliché; you probably don't want to hear me say it; you might even start to yawn in my face because you have heard it so many times—children learn their behaviour from adults. That is not to say that adults are directly responsible for every act of the child, but at least if there is an indication that the adult community took seriously the notion that chemicals of all kinds are dangerous and should be used with care and caution, we would at least have a climate within which we could have a dialogue with our young people. I have not seen a tremendous indication, after all the anguish of the last seven or eight years, that there has been much change at the adult level.

Senator Croll: Of course, the adults do not take the same view as you do of drugs. As a matter of fact, they lump them all together and make no distinction. They hate them all.

Mr. Stein: And use two or three of them.

Senator Godfrey: Except the ones they use.

Senator Croll: Let us deal with alcohol for a moment. You are chairman of the Addiction Research Commission of the province of British Columbia and a former member of the Le Dain Commission. Your voice must count in that particular sphere. With people such as yourself around, how does the government justify a greater number of liquor stores in order to have a little better profit or to provide better service?

Mr. Stein: You have called the wrong witness for that. That is something which I think needs to be addressed to the people whose departments are concerned with that area. I will give you my personal views as to the implications of broader distribution, because I think that is what is implied in your question. In a simple sentence, I do not think the issue of distribution is as crucial at this point in time with respect to drug taking and the kinds of patterns of behaviour as the issue I posed a few moments ago about the attitudes of the adults to deal with chemicals in a satisfactory manner.

We are very limited in what we can do in any of our control systems. If you look at the appendix in the final report of the Le Dain Commission, you will see a very detailed reporting of the ways in which law enforcement agencies tend to control both the legal and illegal distribution of all chemicals, including alcohol, heroin, and so forth. A review of that information two years later when I reviewed it left me with the continued recognition that it is not possible to achieve a control system that will eliminate the possibilities of people damaging themselves from some kind of chemical, whether it is alcohol, pot, or whatever. If I could use an analogy—and this is always dangerous—the one that appeals to me, frankly, has to do with sex.

Senator Croll: That will be interesting. Go ahead.

Mr. Stein: It should cheer you all up a bit. I have five children and I am hopeful that they will be able to learn to handle their responsibilities in that area with a degree of responsibility and learn, also, the relationship of that activity to the rest of human behaviour. I sometimes think it

would be nice if there were a law prohibiting their experiencing something until they are really ready for it, but it is obviously nonsensical to think about it. On the other hand, it is not nonsensical for me as an adult to think from the beginning that my children's views about human behaviour and activities are going to be derived, in large part, from myself. They are going to be aware from the first instance, if they have any kind of awareness at all, of any influence I may have on that decision, along with all kinds of other decisions.

I do not think we can control the availability of chemicals any more than we can control, in the final analysis, the availability of each and every person for sexual experience. But we can make available the kinds of living experiences. I keep emphasizing the family, quite frankly, because I decided that if you were to give me another chance to stand on a platform, I would make it abundantly clear that in the little section which appears in our final report—a small section of four pages—the majority of us concluded that the best hope for learning to deal with the whole chemical dependency problem rested finally in the family, in the involvement of parent and child, in the communication patterns which took place there; and this did not mean that we throw out the law, or throw out treatment programs or education programs, but that we get back to realizing that this is fundamentally and essentially the unit within which some kind of responsible decision-making has to develop. I use the sex analogy because I think it is as important to realize we cannot control the availability of chemicals as it is to realize that we cannot control the availability of sexual experience for our children.

Senator Croll: You are talking now about the whole aspects of life.

Mr. Stein: That is right.

Senator Croll: My point originally was, as a man who has or should have some influence, how much of this liquor are you going to sell? What I am trying to say is that they do not look upon it as dangerous as you do; and no one else does, to my knowledge.

Mr. Stein: Do you?

Senator Croll: Liquor? It means nothing to me. It was always in my father's home. It never bothered us. I hate the stuff even today. I know a lot of people who take a drink and they are rather pleased by it. I do not know many drunks.

Senator Neiman: Mr. Stein, when you are talking about possession, have you a fixed criterion in mind of what possession is? We are talking now about criminal sanctions for offences other than for possession. In your experience, where would you draw the line between possession and possession for the purpose of trafficking?

Mr. Stein: We drew the line on the basis that when you have something which appears to be consumable on one occasion, it is pretty hard to indicate that it was for the purpose of trafficking. Once an individual is in possession of more than that quantity, the onus is on him to have to demonstrate that it was not possession for the purpose of trafficking. For anything over the amount that could be consumed on one occasion, it seems to me that the onus is on the individual to have to demonstrate that it is not for the purpose of trafficking.

Senator Neiman: How about the offence of trafficking? Recalling your days as a probation officer, do you make any distinction in your mind as to the different types of trafficking—the passing around of cigarettes at the high school level and what we call the commercial trafficker?

Mr. Stein: I think the courts have always made a distinction, and they continue to make a distinction, about trafficking on just those kinds of criteria. Some courts do more so than others. What is significant is that the majority of persons charged with trafficking over the past 10 years have been those usually referred to as street traffickers. It is significant in British Columbia that there has been a deliberate attempt in the last year to form a coordinated effort between all levels of law enforcement and international levels of law enforcement to zero in, focus in, on getting sufficient evidence on the person who is not a street trafficker. There are some indications that there has begun to be some hope that we can be a little more effective in this area. The only traffickers who have populated the B.C. jails—I will not say the only ones, but the vast majority—have been the individuals who have been involved in it more for the support of their habit than for the purpose of large financial gain. You ask me if I can make a distinction. That distinction has been made by the courts.

Senator Neiman: Many people have expressed the concern that the use of marihuana, or the encouragement of its use, leads inevitably to the use of other drugs, the so-called more dangerous drugs; yet we have had evidence to the contrary, that this is not necessarily so. What is your feeling on that?

Mr. Stein: My views remain unchanged from the cannabis report of two years ago. I do not think that the evidence exists to that conclusion, that it leads inevitably or in most instances to extended use of other drugs. The point we made in the cannabis document of two years ago was that the individual who has experimented with cannabis appears to be more likely to be prepared to consider other kinds of chemicals than someone who has not experimented with cannabis, but it did not follow that there was evidence to indicate that a majority, or any large number of people who tried cannabis go on to other drugs.

I am fond of the way my former colleague, the chairman of the commission, Gerald Le Dain, put it one day when we were sitting in a group. He said it seemed to him—and it seems to me—it is significant that there is a lot of evidence which we have to explain away when trying to deal with this so-called progression theory—that those who are violently upset and say there is no evidence have to explain away some significant evidence. On the other hand, to those who say it is compelling, that the evidence is convincing, there is no substantiation in that. In a nutshell, I do not think one can find evidence that it leads inevitably to it, but there is no question that for many people experimentation with cannabis is a contributing factor.

Senator Neiman: We have heard time and time again that the West Coast is one of the worst areas.

The Chairman: The drug capital.

Senator Neiman: Yes. We hear this quite frequently. What in your view is this problem on the West Coast all about? Is it mostly heroin, alcohol, a combination, or is it something to which we might contribute if we sanction a change in the law?

Senator Prowse: Or is it the dreary weather?

Mr. Stein: There is no dreary weather on the West Coast. It is always raining, but things are always growing. It is evident that we in British Columbia have the largest population of persons dependent on opiate drugs. We have the largest opiate drug-dependent population in Canada. That has been the case ever since I can remember. I came to Canada in 1962. It was that way then, and I was told it had been that way for quite a while.

Senator Croll: You said opiate—not opium?

Mr. Stein: Heroin is a form of opiate. Having said that it is a part of the country where there is the largest number of heroin addicts means that we in my commission have to give a larger amount of attention than they do in Manitoba, Quebec or in other provinces to the provision of services—to those kinds of services I mentioned earlier, such as detoxification, counselling, residential care—for opiate users than do those provinces. That is significant, and for that reason we look to, and continue to need, a variety of kinds of help from the federal government; but it is essential that both on the west coast and in the rest of Canada there be no illusions that our pattern of chemical abuse is radically different, or sufficiently radically different to justify the notion that it is a heroin problem on the west coast rather than a range of chemical dependency problems, the most significant and serious being alcohol. In that we are identical to every part of this country. We have a range of chemicals that are abused, the most significant one being alcohol, in my view, but we also have the added problem of a large percentage of people involved is opiate dependency.

The Chairman: I think Senator Neiman also asked whether the legislation before us might aggravate the situation that you face on the west coast. Remember it deals only with marihuana.

Mr. Stein: In my personal view it will not aggravate the situation. It will contribute to a growing kind of understanding that we have to deal, each of us individually and personally, in a responsible way with chemical dependency and not look to criminal sanctions against possession as a way of controlling this kind of activity; so rather than add to our problems it will in the long run help, if not to eliminate them, at least to begin to make them more manageable.

Senator Croll: Can you inherit opiate dependency, Mr. Stein?

Mr. Stein: You are asking me? In my work with the Le Dain commission there was no evidence put forward to indicate that it was an inherited type of behaviour.

Senator Croll: Are there some people who are more likely to take to it than others?

Mr. Stein: It was believed very strongly 10 or 15 years ago that the contributing factor in taking heroin had to do not so much with physical characteristics, but the social conditions within which people were living; and at that time the majority of people who were involved in the use of heroin or opiates were thought to be people living in the United States poverty areas. The present pattern of use of this drug, all across North America, appears to me to have put that theory in serious doubt, because we find people from all kinds of social backgrounds presently involved in the use of heroin. I would therefore say at this point that it

would not appear that there are either physically inherited factors, or specific kinds of identifiable social communities that heroin users come in. On the other hand, I go back to my thing that I want to browbeat you with. I think it does have something to do with the milieu that the individual lives in in terms of his interaction with his immediate family.

Senator Croll: Well, tell me this: what have New York, San Francisco and Vancouver so much in common that they should be one, two, three, in the aspect of drug abuse?

Mr. Stein: I do not know.

Senator Neiman: On the question of milieu, do you think there is any validity to the statement that a lot of heroin users commence their habit within the subculture, and specifically within the jails—that they may not have been users of hard drugs until such time as they might have been jailed for some other offence?

Mr. Stein: From my knowledge of the prisons in Canada—and that goes back to when I worked in the prisons—and during the time at which the Le Dain commission made an examination of the question of the amount of drugs available in prisons, it became apparent, and it was in our report, that one of the places, or one of the possible places, where an individual could be exposed to drug taking, was right inside the prison, that being because there was a circulation of drugs in all but a very few Canadian prisons. In fact, at the time we were doing our inquiry the warden of the Matsqui penitentiary said as much. He said, "It is impossible to keep it out completely."

Having said that, I think it is another matter to say that this is where a large percentage of people are getting exposed to the opportunity to use drugs. It is important, to my mind, to keep in perspective that when we send an individual to prison for possession of an opiate we are sending him to a place where he may well be exposed, it is true, to the opportunity to take the drug, but even more important, whether the drug is actually circulating there or not, he is exposed to people for whom this is the whole of their existence, and this, in some ways, is as important as the fact that he may spend some time with a person who had the drug in his possession. He is spending time now with someone who is an evangelist about the importance of taking drugs.

I will just take a moment of relaxation here. This is a point that perhaps might interest you. I remember vividly going out to the Matsqui prison one beautiful sunny day in British Columbia when it was not raining, to take a young man out for what is called a day parole—a release to look for employment. He was a heroin addict, and I was his parole officer, or his future parole officer. He came out of the prison, where he had been for two years, and was in blooming health. He was physically all clean of the drug, and had been working in the mountains. I had just been on a mountain climbing trip in the Fraser valley, and I pointed up to this mountain, getting all excited about how much I had enjoyed the mountain climbing trip, and I said—and perhaps, it was a bit of a silly thing to say—"You must really be glad you spent your time here in Matsqui, which is in the valley, rather than locked up in the B. C. pen." He looked at me, and he looked around, and he said, and he meant it, and this is what shook me, "Oh yes." He seemed to be saying, "There are mountains around here," and I said, "Yes." He was serious. I forgot the words that were used, but he was absolutely serious, and he was living for the moment when he would be back on the street corner.

He had been living for that moment. His whole life revolved around that. It was on that occasion that I understood that what I had to try and help that fellow to learn about was the alternative options available for enjoying life other than just going back to the street. That is a pretty big order when someone has spent all his time and energy for years believing that the only thing that can get him through life is shooting some kind of narcotic into his system.

That was just a little story about the effects of prison. He obviously in that prison spent all his days and nights talking and thinking and dreaming about drugs, and in fact, you might know, if you want to look in the Le Dain report, that there is a part where we make reference to a study at Matsqui. Matsqui prison was a prison set up specifically to try and provide special treatment to heroin addicts, and a study at the end of three years, I think it was to try and determine how effective that treatment was, had some very sobering conclusions.

There were two groups. There was a group that received no treatment, but just stayed there and did their time, and there was another group that were provided with intensive therapy of all sorts, job retraining and so on, and the conclusion, albeit somewhat tentative, but clear at the time they did the study, was that the group that had received treatment were more effective criminals, were involved in an increased use of drug taking and generally felt better about themselves, but had not really altered in their fundamental commitment to the notion of being chemically dependent. In other words, the service that had been provided to them, in the vernacular, had helped them to "get more together", but it had not cut down into the very fundamental view of what was really important in their lives.

The Chairman: Do you think you can get there by proper rehabilitation, or attempts at rehabilitation?

Mr. Stein: My own personal view is that treatment services to those who have developed chemical dependency problems can only be useful when there is some motivation on the part of the individual to seek help. Even having said that, it is a rough go.

Senator Croll: Which comes first, the addict or the criminal?

Mr. Stein: Both.

Senator Croll: Well, they both cannot come first.

Mr. Stein: No; both kinds of behaviour have taken place. That is one of those questions on which there are two files of documents that you could gather from your library. One would argue the case that the addict was first and the other that the criminal was first. I will tell you another quick story. There is a group of men in the B.C. penitentiary, who may have written to you. They have been adamantly requesting that they be the first guinea-pig group for a heroin maintenance program. They say they are 50 years old and have been heroin users for 20 years, so why not try them. I knew a number of them from days gone by and I said: "Look, fellows, if you were provided with heroin on a daily basis, you are sitting in the prison now, can you give me an honest answer as to whether it would make any serious difference as to whether you would continue with your criminal activities related to theft and whatever other kinds of criminal activities are involved? In other words, to what extent would the daily provision of

heroin change your life style or, putting it more bluntly, can you really stand up and say that if you were given heroin daily you would become a responsible citizen?" A number replied yes, but the one I preferred to believe was the chap who said: "I do not know; I really do not know, but I do know that in my opinion it would at least give me the opportunity to consider some alternatives." That was perhaps the most honest answer. He said: "I would not have to spend all day, every day involved in the pursuit of heroin, but whether I would really change or not, no."

Senator Godfrey: To return to the question of marihuana, you have told us that there is a great deal of multiple drug use, including the use of marihuana. Have you any cases in which you give clinical treatment, or feel that you have to, with a straight marihuana user, who takes no other drug?

Mr. Stein: If a person came into one of our clinics and said he was a daily user of marihuana and wished to have access to our detoxification or dry-out centre—which has never happened, by the way—we would invite him to come so that we could ascertain his physical difficulties. That is the purpose of the dry-out stage. If he said he did not need to go and dry out, but needed to learn how to move away from sitting down and smoking three or four joints every day and thereby failing to assume responsibility for the rest of his behaviour and asked for help, we would be glad to give it a whirl and would provide him with contact with the counselling component of our network. Their focus would not be on the fact that he was using marihuana every day, but on the possibilities of his interest in employment and the difficulties in his daily social functioning with his family and friends during leisure time. We would relate to him on that basis, but not because he was a cannabis user.

Senator Godfrey: Do they come to you on the second basis at all?

Mr. Stein: There are those who have come to us because of the fact that they have been in difficulty with cannabis as a primary drug, but they are not sufficiently significant in number that they stand out in my mind. I can think of a few.

Senator Laird: Mr. Stein, you will understand that we are endeavouring to produce a bill which will minimize the use of cannabis. Obviously, it is useless to come up with anything like a prohibition. It is very helpful to receive advice from persons such as you as to what we should do. For example, suggestions have been made by witnesses that education can be very pertinent to this problem. Some talk of a compulsory course in connection with the harm caused by marihuana, to be imposed as part of a sentence. Does that make sense to you?

Mr. Stein: No, it does not. Allow me to answer it this way, that there is a sense to it, there is a logic to it, because I would and do approve education programs. In fact, in my commission we are fostering the development of a compulsory education program for offenders found guilty of drinking and driving. This is the type of program which is now developing in various provinces, but the gist of it is that on charges of consumption of alcohol while behind a wheel, instead of just being fined \$350 or being able to buy his way out of a ticket if he knows the judge, the offender is compelled to take a series of four courses. I think this makes much more sense, because the nature of the behaviour is clearly one which I view as socially dangerous. If

you were to ask me about someone involved in cannabis taking and picked up for driving while under the influence of cannabis, would I see some point in a compulsory education program, my answer would be yes, I would.

Senator Laird: The educational aspect is very important.

Mr. Stein: The other side of the coin, however, is that we do not have any effective evidence. In my opinion, at the logical level we can say it should be more effective than a fine of \$350. It is worth trying, but we do not have the evidence or follow-up studies to ascertain conclusively that it would work.

Senator Laird: In the schools today children are obviously taught the evils of using tobacco. Believe me, I know, because every time I take a cigarette out I get a barrage from my grandchildren. My answer is always the facetious one that it is too late for me to quit. In fact, however, the children receive a tremendous impression of the evils of using tobacco.

Mr. Stein: The approach taken by the commission in British Columbia is to contact every single school board in order to assist them to integrate into their family health curriculum information that is both reliable and balanced in connection with the question of the range of effects which chemicals can have. We are very anxious in our endeavour to develop the information package that goes into schools in the context of family health and family life rather than as a separate issue. We believe that this belongs in the context of discussion in a classroom with youngsters about a range of social problems with which they are faced, the type of job they desire, how to deal with their difficulties in relating to their parents, what they do with their leisure time and how to come to terms with the availability of chemicals. It is in that context that that information can best be looked at and absorbed. Your use of the word "compulsory" evokes in my mind the thought that there are certain basic compulsory components to the curriculum in the education system, and in that context I think it is reasonable to look at whether there should be some basic kind of component of information within the curriculum provided by the province. That is another question. The question you posed to me was whether someone charged with this offence should be sentenced to a series of lectures on the dangers of cannabis. I really do not think there is much merit in that.

Senator Laird: That is rather interesting. Of course, as one hears evidence, one's views, perhaps, will change. It did strike me as a rather useful adjunct to any sentence.

Mr. Stein: You are the latest in a series of groups, of which I was a member of one, and there will be probably ten more, who are slowly learning what the conundrums in this business of drug taking are all about. Perhaps I am sounding a little patronizing, and you will forgive me, but I, too, was very anxious to find something. I felt there had to be something—as a parent, not as a Commissioner on the Le Dain Commission. I felt that if it is not law enforcement exclusively, then perhaps it is education or religion, or something else.

The education program appealed to me. Philosophically, I liked it, until I became the unwitting victim of all the information and evidence that had been compiled on the effects of saturation education and information programs in the area of drug abuse. The evidence became overwhelming, so much so that there was an almost complete stop to this kind of approach in the United States and

around the world. It was found that it had the effect of a red flag to a bull.

Senator Laird: That is very interesting.

Mr. Stein: But don't throw it out. It is one of the tools to be relied upon, recognizing that it has limitations.

Senator Laird: From this whole discussion, I take it that your opinion is that this is a personality problem, perhaps created by the family atmosphere, and so forth. Am I right in arriving at that conclusion as to your thinking?

Mr. Stein: I think that is reasonable way of characterizing my views. I would add that although I stress the importance of the influence of the family on the way in which people develop—and I hope I do not sound inconsistent—I would want to insist on saying that every individual, regardless of family influence or environment, has the responsibility to try, and has the potential to make choices which are not going to be destructive. In other words, early in my career as a social worker I had to come to terms with the fact that so many people had their ability to make choices undermined by people in my profession and other helping professions because they were told what a terrible family environment they had and how terrible it was, to the point where the guy felt that there was absolutely nothing he could do about it. Short of physiological damage from alcohol—and that can mean brain disintegration to the point where the individual's choices become limited because he is physiologically limited—I think that the family is the largest contributing influence, but in individual instances I would not be happy letting someone off the hook because they tell me about the tragic and terrible family environment they have and therefore they have no choice but to waste their lives. I do not believe that.

Senator Robichaud: You told us that there is a very high degree of opium abuse in British Columbia, probably the highest in the country.

Mr. Stein: Comparatively speaking, yes.

Senator Robichaud: And also, perhaps, the highest consumption of alcoholic beverages in the country?

Mr. Stein: Percentagewise, I cannot say that British Columbia has a greater degree of alcoholism. There are statistics which vary in their interpretation on this. Alcoholism in British Columbia is comparable to alcoholism elsewhere. What I was trying to emphasize was that we do have an unique problem with opium use in terms of numbers in British Columbia, but when one looks at the numbers they vary, depending on who you are talking to, from 5,000 to 20,000. Taking the figure at 15,000 to 20,000, when you try to pin it down as to the number using it on a daily basis and otherwise, the picture becomes a little fuzzy. That figure is a significant one, in my view, whether it is 1,000, 5,000, or 15,000. We know that in British Columbia we have a larger population, regardless of what the actual final count is.

Senator Robichaud: In any event, there is a high incidence or high rate of drug consumption in British Columbia. My question is two-pronged. I have been told many times by a former Premier of British Columbia and a very good friend of mine, that British Columbia was by far Canada's most affluent province.

The Chairman: He was a total abstainer.

Senator Robichaud: Yes, you knew him, too. He said that British Columbia was the most affluent province and, as well, it is Canada's most cosmopolitan province. People from all over the world immigrated to British Columbia. Is the problem of drug consumption and abuse related, firstly, to the affluent character or condition of the economy of British Columbia and, secondly, the cosmopolitan character of British Columbia?

Mr. Stein: What you are referring to is an issue with which I want to preface my remarks by saying that I have no scientific basis for my answer. It is one of those issues about which you can talk until four in the morning, but no real light is finally shed on it. It is, however, quite a lot of fun and we do speculate on a lot of these kinds of things. Interestingly enough, before I moved to British Columbia and eventually became a Canadian citizen, I was a resident of the United States, living in the State of Washington, which is just below British Columbia. Washington had the highest percentage of alcoholism in the United States, as well as the highest suicide rate and divorce rate. California was not far behind. Some of us were sitting around on the beach one day and we began to wonder whether perhaps it had something to do with the West Coast. The theory we arrived at—and I am quite serious about this—and one which appeals to me, although there is no scientific evidence, as I said, is what I call the end-of-the-line theory. People come to the West Coast looking for happiness and contentment. I did. I migrated westward, beginning from New York City, through Chicago, Seattle, ending up on the West Coast. I was one of the lucky ones in that I did find peace, happiness and contentment.

Senator Robichaud: You are also one of the younger ones.

Mr. Stein: That may be. For those who do not find happiness and contentment, there is no farther to go, unless they swim to Japan. If you have picked up and have left where you were in the hope of finding a solution to your problems in the West Coast environment and if you do not find it, social disintegration may be a little bit higher. As I say, you can take that and throw it in the nearest garbage pail. There is no scientific evidence for it.

I do not know whether I should do this to my friend, but Le Dain gave me an insight on this a year ago. He came out to visit me just about this time of year, in March. I live in Victoria. He had left Toronto in a snow storm. When he arrived I took him out to the beach. The sun was shining, the flowers were blooming, and he said, "I am in Tahiti, this is Tahiti." He then said, "If someone could not be happy here, he would really feel awfully unhappy, wouldn't he?" In other words, you do not have the excuses. You can say that it rains, but that is not much of an excuse. You cannot say that the pollution is terrible or that there are traffic jams. You have nothing to move off on. In fairness to my good friend, Gerald Le Dain, do not take that as his final word on the question. However, it is an interesting thing to speculate on.

Senator Robichaud: In your opinion, succinctly, do you think there is a relationship between the degree of affluence in society and the degree of marihuana or drug consumption?

Mr. Stein: I will give you a personal answer. I have just returned from two weeks in Israel. I came from Tel Aviv yesterday. I was on a personal visit to a brother who is living there. My brother is a social worker. I had a fair

amount of contact there with people in the social welfare field. The Israelis have been living for a number of years under extremely harsh physical conditions in comparison with Western standards—not necessarily Middle Eastern or other areas. The Israelis, as they have grown in affluence, have also had a very dramatic rise in the incidence of a whole range of social problems, including cannabis-taking by youngsters. I was interested to note during the time I was there that there was very little alcohol consumption. It seemed to be because alcohol is the drug used by the older people. The older persons there have been through some pretty rough, tough times and they have not had the luxury of becoming chronic users of alcohol. It will be interesting to see whether there is an increase in the amount of alcohol consumed by the younger generation. This is a very personal way of answering the question. It appears that not so much with the increase of affluence but with the increase of the time available to partake of a variety of activities other than just simply keeping body and soul together, you begin to experiment with a variety of other kinds of behaviour, including drug-taking.

Senator Robichaud: That is a fair opinion. On the second part of my question, do you think homogeneous society does not consume as much drugs and alcohol as a cosmopolitan, heterogeneous society such as the one in British Columbia? Is there any difference?

Mr. Stein: I do not know of any.

Senator Croll: The trouble with Britain is that the problem is as big as it has ever been.

The Chairman: And in the Scandinavian countries.

Mr. Stein: I do not think there is any evidence that it is a significant contributing factor.

Senator Prowse: Its availability, probably.

Senator Asselin: As a former member of the Le Dain Commission, I think your favour the bill under study.

Mr. Stein: Yes.

Senator Asselin: Do you think this bill will decrease the number of users of cannabis and marihuana?

Mr. Stein: In the long run, yes.

Senator Asselin: Would you explain that?

Mr. Stein: Again, it is a very personal kind of an answer. Your question was whether the bill would decrease the number of users. I would not be so optimistic about that. I really do not know. My answer is directed to people who are heavy, chronic, users. The way in which I would care to answer that is that I do not think it will play a dramatic role in reducing or increasing the number of users or abusers. They will continue. It would decrease the number of people whom we are stigmatizing, adding a kind of scar to their lives, making it more difficult for them to become responsible citizens. I do not think the impact on the number of users, one way or the other, will be of any real significance. It is a very personal opinion. I would add that in the short run it is reasonable to assume it may lead to an increase momentarily in the number of people thinking, "Now, maybe I will try it." We cannot avoid that possibility in the short run, because the kind of confusion which I would like to see eliminated in the minds of the public is there. You are up against a problem in which you have to

cut the knot, so to speak. The problem is that people do think—we said this in the report—that by removing a criminal sanction, it is some kind of approval of the activity. In my estimation they should not think that. Having removed it, for some, in an immediate way, that is the message they will get. Here is a pretty unreliable example: I asked my 16-year old son what did he or his friends think, or interpret this to mean, would he think that the drug is now sanctioned or safe? He said, in typically blunt fashion, "Some people will think that; if they think about it at all, they will realize that isn't the case; "but then he said, "Most people don't think very much." So in the short run it may involve more people experimenting with it. You do not have an easy out on this.

Senator Asselin: Do you think this bill might be a step forward?

Mr. Stein: You mean to the state saying this is an activity which is desirable—is that what you mean?

The Chairman: Yes, that is the question.

Mr. Stein: No more than it has been in the state encouraging the setting up of organized homosexuality. It does not have to. As has been stated in a number of documents, it does not require, as a follow-through, that the state come along and say, "This activity is now approved and sanctioned and we will now make it available through your local outlets." There is no necessity for that to happen.

Senator Prowse: We could say: "We think you are nuts, but we do not say you are a criminal".

Mr. Stein: You put it in a very blunt but useful way. I may think you are a bloody fool, but there is no point in adding a criminal record to your foolishness. That, in a nutshell, is what this is all about and what you are struggling to try to make the country understand. When I say "you" I mean in connection with the bill before you.

The Chairman: We must now release Mr. Stein, as we have another witness. It is almost 3.30. Thank you, Mr. Stein, on behalf of the committee, for your most interesting presentation.

[Translation]

Senator Asselin: Mr. Chairman, the witness just said that he was a member of the LeDain Commission. I believe he was an excellent witness. However, he was introduced to us as a person concerned with guidance, particularly in the field of alcoholism. Obviously, during his appearance here, he referred to various experiences he went through as a member of the LeDain Commission. We can't blame him. The point I wish to draw to the attention of the Committee is to know if we now have decided to invite other members of the LeDain Commission to testify before the Committee, having decided at the start of our hearings—and in this respect I am raising the main objection brought forth at the start of our examination—we had decided that there is no point in asking members of the LeDain Commission to testify because we have their Report, that we all can read, and that we have all the data we require for our examination.

Since we have made an exception for the witness before us, I believe that in fairness to other members of the LeDain Commission—Mr. Chairman told us he had contacted Mr. LeDain who had turned down the invitation—a

similar invitation should be extended to Miss Bertrand of Montreal.

The Chairman: No, Mr. Senator. At the start of our hearings we mentioned the possibility of inviting members of the LeDain Commission and the Committee requested me to discuss the matter with Mr. LeDain. He told me he had nothing to add to his Report. So he said he would not appear before us. He also said: "Since you insist, I will go, but I have nothing to add to my Report". When I spoke to him I mentioned the name of Mr. Stein and he replied: "You should invite Mr. Stein as Chairman of the Alcohol and Drug Commission of British Columbia."

Senator Asselin: Mr. Chairman, you know very well that...

The Chairman: ... because he has had further experience since the LeDain Report, two years ago. That is why we have invited Mr. Stein.

Senator Asselin: One moment.

The Chairman: ... particularly in view of the fact that everyone spoke to us about the situation in British Columbia.

Senator Asselin: I understand all of that, Mr. Chairman, but there also are difficult situations in Quebec and in other provinces. Today I considered the witness to be a former member of the LeDain Commission. I can't see why we couldn't also invite Miss Bertrand to give another impression of her experience.

The Chairman: Well we should leave this up to our Steering Committee. I will ask the Senators to remain here after this afternoon's meeting to discuss this matter. I have another topic that should be discussed.

Senator Langlois: We will see after.

Mr. Stein: I believe I should add something also, that is, that it was not my idea to come here. I am please to be here but it was on invitation.

The Chairman: That's right.

Mr. Stein: That is it. I didn't find it necessary to speak once again on this subject before a Committee, but I asked the same question to Senator Neiman: "Why not Mr. LeDain or Miss Bertrand, or others?". I was told the reason is that I am Chairman of that Commission.

[Text]

Senator Asselin: It was not my intention to blame you.

Mr. Stein: Why do you answer me in English? My French was not that bad.

Senator Asselin: It was just that I wanted to see that we gave the same treatment to all the commissioners.

Mr. Stein: I understood your point. I just wanted to get my point in.

The Chairman: As I said, the committee will meet afterwards, and we will listen to these points.

Senator Godfrey: I would just like to get it on the record that I personally found it very useful to hear from someone who was on the Le Dain commission, to confirm that he had not changed his mind in two years, if nothing else.

The Chairman: I reported to you that Professor Le Dain told me that he had not changed his mind either.

Our next witness is Mr. Paul Copeland, Secretary of the Law Union in Toronto. I believe that you have a copy of the submission from the Law Union before you.

Senator Godfrey: I think most of us have had an opportunity of reading this.

The Chairman: I have not.

Senator Godfrey: I am sorry.

The Chairman: Now, Mr. Copeland, will you tell the committee what the Law Union is, and what particular interest you and the Law Union have in the legislation before us.

Mr. Paul D. Copeland, Secretary, the Law Union of Ontario: Honourable senators, the Law Union of Ontario, in its most recent formation, was formed about ten months ago. It is an organization of lawyers, law students, law teachers and legal workers. It is an Ontario organization. The majority of our members are in Toronto and the majority of our experience with the drug laws is in the Toronto area, although there are some functioning members in Sudbury, Thunder Bay and a few other centres in Ontario. It is an association of lawyers, in some ways similar to the advocates' societies, in some ways similar to some other legal organizations. It would be fair to say that it tends to be more overtly political in its views than some of the other lawyers' associations. It is perhaps a self-styled leftist group of lawyers. We are people who are interested in using the legal processes and the legal systems to cause some social change in our community. The majority of our members are reasonably young, if I can be included in a reasonably young definition. I am 35.

Senator Laird: You are reasonably young.

Mr. Copeland: I think it is fair to say that the majority of our members are aware of the use of marihuana, which might be stating it mildly, and we are of the generation in which the use of marihuana has been quite prevalent. The majority of us have followed with interest the creation of the Le Dain commission, the reports of the Le Dain commission, and the government decisions quite some time ago to move cannabis from the Narcotic Control Act to the Food and Drugs Act. When the bill was brought before the Senate, the steering committee of our organization decided that it would be appropriate to try to make some criticisms of the bill, to look at the bill and make some submissions to this body concerning the matters that we believe are problems in our society.

The Chairman: Thank you. Do you want to read your submission?

Mr. Copeland: I would be content to read it. I have some instructions from the steering committee of the organization. We did not get to go through the submissions until Sunday morning. We had a meeting at that time which dealt with the brief, and while I was instructed that the brief could be submitted, I was also instructed to emphasize the first part of the brief, namely, the legalization aspect of cannabis and its use.

The steering committee was concerned that the brief was too conservative, and that by dealing with substantive amendments, that is, tinkering with Bill S-19, it might appear that we find Bill S-19 acceptable. What they felt,

and what I feel, since I wrote the majority of the brief, is that what the brief does not spell out clearly enough is that cannabis will end up being treated in the legislation more seriously than restricted drugs or controlled drugs.

I had hoped to bring to the Senate samples of methamphetamine, speed, and 'plastipac' syringes to demonstrate for you clearly the nature of the law relating to methamphetamine, and to illustrate the differences in the treatment of it in the legislation. The law as it now stands would allow me to come along and give each of you hits of amphetamine, or to give each of you syringes, and I would not be breaking any of the criminal sanctions of this country. It would not, however, allow me to do this with a cannabis cigarette. Unfortunately, my sources in Toronto were not able to obtain any methamphetamine to give you. I think this is an indication of the failure of my sources, and not a sign of a shortage of street methamphetamine.

Senator Prowse: You do not think it is the success of the law?

Mr. Copeland: There have been at times shortages of methamphetamine in Toronto, and there have been at times ample supplies of it. I understand at the present time it is not in particularly short supply in Toronto.

What the brief also does not spell out clearly enough is that the main result of this legislation will be to simplify prosecution of the offences of trafficking and of possession for purposes of trafficking, to what we consider to be the very great detriment of accused persons. We regard the reduction of the possession penalties as mainly a cosmetic effect to camouflage the effects of those changes. Now, if it meets your approval I will read the submission.

Senator Croll: Why do you not just summarize?

Senator Asselin: I would like him to read it.

Senator Croll: This will go on record, anyway.

The Chairman: Senator Asselin asks that it be read. It is not a long brief.

Senator Croll: We are not going to get much time to examine him. It could go on record, and he can summarize it. The result would be to put some life into it—life that is lacking in some respects.

Senator Prowse: We can go to 8 o'clock tonight to examine him if we have to.

Senator Croll: I will have had my share of it, personally, by that time.

Senator Asselin: Have you read it, Senator Croll?

Senator Croll: Yes, I have. When I came in I asked for a copy of it, and read it.

Senator Asselin: You have had time for that? I am very happy for you.

Senator Croll: Well, go ahead. I have no objections.

The Chairman: Every member of the committee must be in a position to know the contents of the submission. Please proceed, Mr. Copeland.

Mr. Copeland: "I believe that this bill will produce a deterrent effect on those Canadians who respect the law because it is the law." (The Honourable Marc Lalonde, Minister of National Health and Welfare, February 4, 1975

before the Standing Senate Committee on Legal and Constitutional Affairs).

Hundreds of thousands and perhaps millions of Canadians now regard the use or non-use of cannabis products as a matter of personal preference with almost total disregard for the legislation prohibiting its use. The number of Canadians influenced in the fashion suggested by the minister is miniscule.

The real problem of cannabis use is not criminal, but social. Like alcohol, cannabis can be personally destructive, a crutch or simply pleasurable. Because there are serious social and health problems associated with the abuse of cannabis, we would prefer to discourage the use of cannabis. Given the failure of the present legislation to stop the use of cannabis, there is no justification for criminal or quasi-criminal prosecutions for possession.

There are other perhaps more pragmatic reasons for our opposition to the current and proposed cannabis legislation. There is a serious backlash from cannabis possession prosecutions in terms of public hostility to the police. The overhead costs of cannabis prosecutions are a waste of money. While we have no way of working out an exact estimate of costs, having regard to the number of cases, the costs of drug analysis, court officers, police officers, judges and lawyers provided through the Legal Aid plan, we believe that the costs of attempting to enforce the prohibition exceeds several million dollars a year. The drug courts at the provincial level in Toronto are cluttered and backlogged dealing with simple possession charges. Because of the vast number of possession charges, these courts are prevented from processing more serious drug charges in a reasonable length of time. For these reasons we would prefer to see cannabis products dealt with in the manner proposed by the Bertrand Minority Report of the Le Dain Commission with no criminal sanctions against possession and distribution controlled by the government. It is apparent from the legislation before this committee that the present government has no intention of ending the cannabis prohibition and we will, therefore, make submissions concerning Bill S-19 as it presently stands.

Possession Offences:

Depriving judges of their right to sentence people to jail for possession of cannabis products is an improvement, but it will do nothing to change the class nature of the enforcement of the law. If you spend a day in drug courts in Toronto, or even in Brampton, you will find that the law is dealing mainly with young people who do not have their own residences in which to smoke. The 1973 statistics presented before this committee regarding convictions for possession of cannabis showed that the vast majority of persons were under 25 years of age and this is confirmed by Dr. A. B. Morrison, Assistant Deputy Minister, in testimony before this committee. With some exceptions, the law is not dealing with the middle-class cannabis user. That will not change under Bill S-19. We believe that the use of cannabis is widespread in our community and includes lawyers, professors, teachers, members of Parliament, crown prosecutors, as well as advertising, entertainment and media people, but they are seldom seen in the courts. To provide penalties of up to \$1,000 will merely be to license use for the middle class user who has little likelihood of being caught. When a judge imposes a substantial fine with jail in default of payment, it is readily apparent who will end up serving time when they cannot pay. Under the proposed legislation, a judge will be able to

exact jail time at the rate of \$5.46 per day. If the monetary penalties are to remain the same, we would suggest maximum custodial periods for non-payment of fifteen days and thirty days, respectively. In fact, if prohibition is to continue, we would recommend that the penalties under section 48 be reduced to \$100 or ten days in default of payment for a first offence, and \$200 or 20 days in default of payment for a subsequent offence. We believe that such maximum penalty would bring the legislation into line with what the law is in practice. We also recommend that convictions for possession of cannabis not be deemed a criminal conviction and that a criminal record not result from court proceedings involving possession of cannabis. The Minister of National Health and Welfare has indicated that applications for pardon may be made concerning criminal records for cannabis convictions. Our brief experience with pardon applications indicates that they are being processed very slowly indeed. It should be remembered that even those given a discharge, conditional or absolute, for possession of cannabis, have to make an application for a pardon. This will not change with the proposed legislation. We wonder what the costs would be and what the time delays would be in processing 20,000 or 30,000 pardon applications each year.

Trafficking and Possession for the Purposes of Trafficking: Definition of Trafficking:

Under the Narcotic Control Act, "trafficking" is defined *inter alia* to include the mere giving of cannabis from one person to another. At present, in relation to controlled and restricted drugs under the Food and Drugs Act, trafficking is not defined to include giving. Bill S-19 will define trafficking to include giving. In our view, the use of marijuana is much like the use of alcohol. When friends come over, it is quite common to have a social smoke, and it is quite common for people to pass around a joint or a hash pipe. Surely such social use is sufficiently akin to possession and is of such a non-commercial nature that it should not be included in the definition of trafficking.

Mode of Trial:

The Court of Appeal of Ontario and of other provinces has held that except where there are exceptional circumstances, a person convicted of trafficking in cannabis or of possession of cannabis for the purposes of trafficking should be sent to jail. Where a jail term will result, we are most reluctant to deny the accused persons the right to a jury trial and to force them to have their cases dealt with in the provincial court. In most cases heard in the provincial court, either as summary conviction matters or as absolute jurisdiction matters—impaired driving, theft under—no one goes to jail on a first offence. Even on a first offence for breaking and entering, where a right to a jury trial remains, young people very seldom go to jail. Jury trials allow the accused person to have a preliminary inquiry to tie the police down on their evidence, and to learn the case that they have to meet, to delay their case to permit re-packaging of their life for sentencing purposes, to plea bargain by threatening a long jury trial in badly overcrowded courts and, most important, to have the facts of their case decided before people who are sometimes more prepared than judges not to believe everything that the police say.

Under the present Food and Drugs Act, the crown has the right to proceed summarily on trafficking and possession for the purposes of trafficking charges involving

restricted and controlled drugs. But the reality is that they only proceed summarily in rare cases. In our view, considering that cases involving ten or twenty pounds of marijuana are only receiving sentences in the two-to-nine-month range—and in one 400-pound case, six months in the Ontario Court of Appeal—we believe that the crown will be proceeding summarily in many of the cases involving substantial quantities of cannabis—perhaps involving 30-40 pounds. The statistics submitted to this committee indicate that in 1973 very few persons convicted of these offences were sent to jail for more than two years. We would suggest that before this committee make a recommendation concerning Section 49 of Bill S-19, it obtain information from the prosecution section of the Department of Justice as to the manner in which the summary conviction procedure will be used on these charges.

Dr. Morrison's testimony before this committee indicates that the summary conviction procedure is intended to deal with the non-commercial trafficker. If that is the case, we believe that a maximum penalty of six months' incarceration is sufficient. In the criminal legislation it is only drug offences where the maximum eighteen months' penalty is available on summary conviction procedure. We believe that the net effect of the change in mode of trial will result in more people being incarcerated for cannabis offences under Bill S-19 than are at present incarcerated under the cannabis provisions of the Narcotic Control Act.

Cultivation:

The summary conviction mode of trial for cultivation will create the same problem for accused persons as those set out in relation to trafficking and possession for the purposes of trafficking. At present, the crown very seldom proceeds on cultivation charges and will usually take a plea to possession in small cultivation cases. This will presumably disappear if bill S-19 becomes legislation. We believe cultivation should be dealt with either as a possession offence or a possession for the purposes of trafficking offence.

Importing and Exporting:

We believe that there is general agreement that the present seven-year minimum sentence for importing or exporting cannabis products is ridiculous. The Food and Drugs Act at present does not contain specific penalties for importing or exporting. Importing or exporting is merely included in the definition of trafficking. Such a provision would be sufficient in relation to cannabis. The reasons for including specific penalties for importing and exporting are to be found in the statements attributed to the Minister of Justice, the honourable Otto Lang, in the fall of 1974. He indicated that he did not trust judges to impose severe enough penalties for the offence of importing and for that reason wanted to maintain mandatory minimum penitentiary terms. Yet, the Ouimet Committee many years ago recommended the abolition of mandatory minimum jail terms for criminal offences.

At present the offence of importing is dealt with by the police and the Department of Justice in the following manner:

- (a) for importation of cannabis in quantities consistent with personal use, a charge of possession is laid;
- (b) for importation of cannabis on a small-scale commercial use, a charge of possession for the pur-

poses is laid, or, if an importing charge has been laid, a plea to the offence of possession for the purposes of trafficking will be accepted by the crown;

(c) for large-scale commercial importation, the federal Department of Justice insists that the matter be dealt with as an importation charge. The courts almost invariably mete out the minimum sentence, seven years.

On summary conviction offences for importing, the Bill provides a maximum penalty of two years. In this mode of trial, the accused person will be denied the option of a jury trial. On procedure by indictment, a maximum penalty of 14 years will be available. This is four more years than is available for importing speed or acid. On procedure by indictment, a minimum penalty of three years will be mandatory unless the person establishes that the importing or exporting related to personal consumption. This means that a youthful commercial importer will have to go to a federal penitentiary with no option for the trial judge to send him to the less destructive influence of a provincial reformatory.

Conclusions:

Six years have now passed since the creation of the Commission of Inquiry into the Non-Medical Use of Drugs, and three years have passed since that commission's cannabis report was submitted. Two-and-a-half years have passed since the Liberal government first announced that cannabis would be moved from the Narcotic Control Act to the Food and Drugs Act. We are fearful that if Bill S-19 is passed in its present form, many years will go by before any new legislation in the area is presented. For that reason, we oppose passage of the bill in its present form. If prohibition is to remain, we would recommend either that Bill S-19, with the amendments contained in the appendix to this submission, be enacted or, in the alternative, that no legislation be enacted.

I do not think it is necessary for me to read the appendix. It merely contains the proposed amendments which are set out in the body of the submission.

The Chairman: Is there a motion that the appendix to the brief be printed as an appendix to today's proceedings?

Senator Langlois: I so move, Mr. Chairman.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

(See Appendix "B")

The Chairman: Thank you, Mr. Copeland. Do you have a question, Senator Croll?

Senator Croll: Not at the moment.

Senator Laird: Somebody has to start off.

The Chairman: I thought that Senator Croll, having read the submission ahead of the rest of the committee, would be ready.

Senator Croll: I will be glad to lead off, if you wish.

The Chairman: Senator Laird, I think, is prepared to start.

Senator Laird: I am always prepared, Mr. Chairman. With respect to this matter of a pardon and the difficulties of procuring same—and believe me, you do not have to tell

us—it has been suggested by someone that it might be an excellent idea to have the automatic expungement of a record of conviction for mere possession after a period of, let us say, one year or two years, charge free. What is your comment on that?

Mr. Copeland: My experience with the users of marihuana who have come before our courts is that they do not stop using marihuana because of the court proceedings. They may go to court and receive a conditional discharge or a suspended sentence with probation, but that does not deter them from using marihuana. If they stop using marihuana, they will do so as a matter of personal preference, not as a result of legislation. An automatic pardon is an improvement over the present situation, but I do not think that in fact an automatic pardon has any relationship to whether the person will stop using the drug.

Senator Langlois: The witness should be reminded that the suggestion made by the CMA was to the effect that the pardon would be automatic after a probation period of one, two or, perhaps, three years.

M. Copeland: My general experience is that people do not get busted a second time for marihuana. They are more efficient in their use of marihuana once they are caught. A number of people could successfully go through a period of one, two or three years without being back before the courts but who still use marihuana. If you are going to retain the criminal record in relation to possession, I would be happier to have an automatic pardon come through if the person does not come back before the courts.

Senator Laird: That is what I was trying to get at. I should also like to get your point of view on the broad, general picture. Would you start off by agreeing that the use of marihuana cannot do you any good?

Mr. Copeland: With some exceptions, I would generally agree that the use of marihuana, as in the case with the use of alcohol, does not do you any good. I do not want to distinguish between the moderate use of either one of those substances.

Senator Laird: Let us take it a step farther. Is excessive use of marihuana liable to be very harmful?

Mr. Copeland: My own personal opinion, senator, is that it is liable to be less harmful than the use of alcohol.

Senator Laird: But is it likely to be very harmful, from what you have learned about it?

Mr. Copeland: From what I have learned and from the material that has been presented to this committee, I would agree that there is a motivational syndrome that I think Dr. Morrison talked about. People, particularly young people, who abuse the drug or use it excessively, just through being stoned all the time cause themselves some very great problems. There are some great problems in relation to smoking marihuana and driving. The problems involved with smoking marihuana and driving are less severe than the problems of drinking alcohol and driving, but both are problems and both are things I should like to see discouraged in some way.

Senator Laird: Is it not our job to minimize the use of marihuana through this bill and certainly not to give the impression, as it appears to be abroad, that somehow or other this bill is legalizing marihuana? Is that not our job, in your opinion?

Mr. Copeland: Whether you maintain the provisions under the present Narcotic Control Act or whether you pass into law the provisions contained in Bill S-19, I do not think you will have any effect in reducing the use of marihuana. I think it is a matter of personal preference for people in Canada now, generally speaking. I am one person who is somewhat deterred by the legislation because of my role as a lawyer. I used to say I was tired of being the last person in the country who was deterred by the legislation.

Senator Laird: By the way, I note with interest that you concluded by, in effect, suggesting two alternatives, one being to pass the bill with the amendments set out in the appendix to your brief, and the second being not to pass the bill at all, but just let the situation remain as it is.

Mr. Copeland: If you want our reasoning on that, senator, we are greatly concerned with the provisions relating to the prosecution of people charged with possession for the purposes of trafficking and trafficking, but mainly for the purposes of trafficking. The present provisions in the Narcotic Control Act give those individuals the right to jury trial, and we are extremely reluctant to have people sent to jail when they do not have that right. If the legislation stays as it is, they will maintain that right. If I were to have a choice and if prohibition were to continue, I would probably take the position of reducing the penalty for possession and leaving everything else the way it is. Whether or not you move it to the Food and Drugs Act is mainly academic.

Senator Laird: As a lawyer, do you think it would be feasible to create two types of offence for, let us say, importation? The person who is a non-commercial importer and the individual who is a commercial importer. Would that be feasible in legislation, and would it work?

Mr. Copeland: I see no reason for having any specific penalties for importing, particularly of personal quantities of marihuana. The penalty that would be imposed, and is generally imposed, by the court at the present time is the same as the penalty for possession. The courts really do not seem to distinguish very much between someone who brings in two marihuana cigarettes at the airport and someone who is found with two marihuana cigarettes on the street.

In relation to the provisions for the commercial importer, I am very reluctant to maintain a mandatory jail term, particularly of the size contemplated in this legislation. If you want to have different provisions for different types of importing, it makes some sense. I think the courts generally have been capable of dealing with the distinction, albeit with the problems created by the mandatory seven-year sentence.

Senator Laird: Let us say the mandatory seven-year minimum is maintained for a commercial importer, but certainly a somewhat lesser penalty for the non-commercial importer.

Mr. Copeland: I think seven years is a ridiculous term.

Senator Laird: Even for a commercial importer?

Mr. Copeland: Most definitely for a commercial importer. You have to look at the sentences that are being meted out presently for people with fairly significant quantities of marihuana. Someone with 30 pounds of marihuana is a commercial operator. In Toronto, there was a case dealt

with two weeks ago. He had 50 pounds of marihuana, he was functioning as a courier of that marihuana. He was not the principal operator. He received 60 days in jail. He had no previous criminal record. Last week I had a client with 11 pounds of marihuana who was the principal operator. He received three months in jail. He had no previous criminal record and no other criminal behaviour. The sentencing practices in Toronto, which is the area with which I am familiar, indicate fairly mild sentences for people who are involved only in the commercial trafficking of cannabis products, particularly marihuana. Courts tend to distinguish between marihuana and hashish, between marihuana and hash oil for instance. A commercial trafficker of hash oil, with a couple of pounds of hash oil—I am not sure of the comparison with marihuana but it would probably be in the 30 pounds or 40 pounds range—received a three-year sentence. He had no previous criminal record.

Three years in jail is a very long time. I do a good deal of work with people in prisons. A three-year sentence is a great disruption in a person's life, particularly when you are talking about an 18 or 19-year old person who has had no other criminal activity and has not been exposed to the criminal element. To pack him up and send him off to Kingston and then subsequently to Warkworth, and expose him to a number of people who are into a lot of other more serious criminal activities, is a great danger.

Senator Laird: I am afraid you and I do not see eye on this.

Senator Neiman: On that same subject, Mr. Copeland, you are obviously finding, even with the present laws, that sentencing practices and factors are nowhere in accordance with the laws as laid down. They vary from city to city and even from judge to judge.

Mr. Copeland: That is true, and most definitely from province to province. The person in Toronto received 60 days for 50 pounds. In Alberta there was a case involving the same quantity of drugs and the person received eight years. I regard that as a ludicrous sentence for a first offence, even for a first offence of trafficking in heroin.

Senator Neiman: We are dealing here with the whole question of sentencing practices. One of our members took what I would call an opposing point of view and said, "If the courts are not meting out the sentences already provided, why do we not leave them the way they are, because we know the judges will be lenient and will not adhere to the laws which are set out."

Mr. Copeland: For breaking and entering a dwelling house, the maximum available penalty is life imprisonment. If you go into the provincial courts in Toronto and watch the young people pleading guilty to breaking and entering, they almost invariably receive a suspended sentence, on probation, which is what we do with first offenders. We do not like to lock them up. We do not like to put them in jail. That is a reasonable approach. If after the first offence they are back into more trouble, they will go to jail. In my view, it is very unfortunate to put first offenders, people with their first contact with the law, even with trafficking in cannabis products, in jail.

Senator Neiman: You would argue for flexibility with the law, with the dispensation of the sentencing. Do you like the practice of the Crown and judges varying sentences?

Mr. Copeland: No one is imposing the maximum sentence for trafficking in cannabis products, particularly on a small scale. The statistics before you indicate, generally speaking, that everyone is getting under two years. A two-year sentence presently is very high, yet the maximum available is life. Judges are not imposing sentences like that for first or even second offenders.

Senator Neiman: Can you tell us something about your own experience in the Toronto courts, apart from the sentences which may be meted out, of processing these cases through the courts. Do you find a great dislocation in the courts? Are they setting up special drug courts as they did traffic courts to handle these cases?

Mr. Copeland: In Toronto, at the provincial court level, there are two courts that deal exclusively with drug offences. They are incredibly backlogged. They are spending perhaps half of their time dealing occasionally with possession trials, and most often with remands or pleas in connection with possession offences. The serious cases are not coming to trial. I have a case presently where the allegation, based on wire tap evidence, is that 100 pounds a week of cannabis products are being distributed from the premises where they had the wire taps. That case is now seven months old. We have not had a preliminary hearing. We cannot get a special court in Toronto to hold the preliminary hearing. The preliminary hearing will probably last about a week. We cannot get a special court for that preliminary hearing until September, when the case will be at least a year old. I would not expect that case to go on for trial until a year and a half or perhaps two years after the offence. That, in my experience, is quite common with trafficking offences because of the way the provincial courts are tied up. We come to the provincial court for a preliminary inquiry on a substantial case. I have a number of cases involving 50 pounds, 75 pounds, 100 pounds. There is no court available. You sit until 12.30 and the judge says, "We shall not reach this case, do you want to adjourn?" The case is adjourned, because you will not reach it, and even if you do reach it, you will get in one hour's evidence and will then get tied up following the judge from court to court trying to get in another couple of hours of the case.

Senator Neiman: You mean he does not stay with that case until it is finished?

Mr. Copeland: He stays with the case until it is finished, but he moves out of the drug court after a month. If you have not finished the case in a month, you have to start following him through the other criminal courts. I have had one case which took two and a half years to get to trial. We started the preliminary hearing a year after the offence. The preliminary wandered from the drug court, and followed the judge from the drug court, and followed the judge through a number of other courts. We could never get together with the judge and the Crown. It finally ended up in the Willowdale Provincial Court. We had about an hour's evidence on a number of different days and we eventually finished the preliminary hearing. When we got to the county court we could not have a trial. The case was up for trial six times. There was never a court available to hear it.

Senator Neiman: Do you think there are many cases before the courts which deal solely with marihuana? Can we isolate this drug and deal with it reasonably well in this type of legislation, when we are talking about penal sanctions?

Mr. Copeland: There are a large number of cases of trafficking offences, possession for the purposes of conspiracy, which relate solely to marihuana. My experience is, with regard to drug dealers, that a large number of them are very selective with regard to what they deal in. They will quite often deal only in cannabis products because they regard them as being relatively harmless, and something that is not inflicting great danger on their fellow members of the community. They will often also regard trafficking in methamphetamines and trafficking in heroin as a very serious matter and something that they would not be connected with.

In relation to that, I used to be general counsel for Rochdale College, a place where there was very significant drug trafficking. They were trying very much to keep out trafficking in heroin and methamphetamines, but they paid no attention whatever to the distribution of soft drugs, or at least, of cannabis and of LSD. The general view of the governing body of that organization was that that was something was not particularly harmful. What they wanted to do was to keep out the speed dealers and the junk dealers, and they were relatively successful in that.

Senator Croll: Rochdale College was successful in something?

Senator Neiman: In your experience have you felt that most judges or courts tend to deal with cannabis offences—certainly first offences—with either a conditional or an absolute discharge.

Mr. Copeland: You are talking about possession offences?

Senator Neiman: Yes.

Mr. Copeland: It varies in Toronto from judge to judge. There are a number of judges who, as a matter of course, will give conditional discharges to almost anybody who comes in front of them. What you will see in court is either duty counsel, or the person, coming in by themselves, and the judge will say to the crown prosecutor, "Does he have a record?" The prosecutor will say, "No", and the judge will say, "I will give you a conditional discharge; one year's probation, if you get into trouble, you get a conviction."

There are some judges who, as a matter of course, give absolute discharges for possession offences. You come into their court and it is absolute discharge after absolute discharge. Then there are some judges who will not give either a conditional discharge or an absolute discharge except in the most extraordinary circumstances. In the case of those judges, what you find is \$50 fines, sometimes a suspended sentence and probation, but usually monetary fines of \$50, \$100, or sometimes a couple of hundred dollars; but in Toronto a couple of hundred dollars is now regarded as a very serious penalty for possession of small quantities of cannabis.

Senator Neiman: Do you have the same delays for these possession offences in processing them through the courts?

Mr. Copeland: They are not delayed so much, because the trial takes place at provincial court level. In Toronto the analysis of cannabis products is delayed for four, five or six months, as it takes that time to have the substance analyzed. They have been theoretically working at reducing the delay in relation to that, so that if you want to make sure that what you had actually did analyze out as a

cannabis product, it might take you four or five months even to plead guilty. What will most often happen is that a trial date will be set in the provincial court on the understanding that a certificate of analysis will be delivered on the day of trial, and you agree to accept service of that certificate on that day; but generally it will take four or five months to get a trial date on a possession offence. On occasion, though, you will come to court and spend the whole day in court and you will not be reached on a possession offence.

Senator Neiman: Are the accused always allowed bail in those circumstances?

Mr. Copeland: Almost always. As a matter of fact, they are almost always released nowadays on an appearance notice by the police who arrested them.

Senator Neiman: Is there a restriction on their residence in the province, within the area?

Mr. Copeland: If you are released on an appearance notice by a police officer, there is no restriction whatever on anything you do. Sometimes, because there are other charges against you, or perhaps because it is a second or third offence, the crown will want to demonstrate to the court that there should be some terms on which you are released. Sometimes the terms will be that you reside at home, sometimes that you remain in the province; but it is fairly rare with possession offences where the person has shown up in court, that there are any restrictions or any form of bail. Usually you end up in court on an undertaking to appear, or are released by the police officer on a release notice.

Senator Croll: I have been looking over the recommendations here. The substance of this whole thing seems to be to lessen the penalties. Is that true?

Mr. Copeland: Oh, yes.

Senator Croll: What else? Is that all there is to it? Is it just a matter of penalties and how to defend the people?

Mr. Copeland: That was the problem with the brief, namely, whether we should address ourselves at all to tinkering with Bill S-19. That is what I regard the proposed amendments as—tinkering. It is still a form of prohibition. All we are talking about is a less stringent prohibition so that the monetary penalties will be less, that the alternative incarceration will be less, and that the finding of the court will not result in a criminal record; but it is just a lessening of penalties.

Senator Croll: There is no disagreement on that. What is the difference, whether it is \$100 or \$200 or \$50? We could not care less. We are trying to lessen it to the point where the accused is hurt the least on conviction. We are all in agreement that he ought not to have a criminal record. It is difficult to work out how to deal with it. You heard the last witness say that if it were a question of seven offences he would not want a person to have a record, so it does not make much difference with regard to that point. The men in your Union, though, who are doing some thinking, had some thoughts other than what you have presented here today. What are they?

Mr. Copeland: Our first thoughts are to legalize it and stop playing around. It is academic to talk about any form of legal sanctions when the use is totally widespread in our community.

Senator Croll: All right, let us start with that first. You suggest that we legalize it. All right, but who is in control? You are not suggesting that every newsstand handle it. Who is to legalize it? The provincial government? The federal government? The municipal governments? Who is to legalize it?

Mr. Copeland: I am quite content that there be provincial marihuana control boards. One of the important questions—and this is something that was brought up a number of years ago by a friend of mine—is as to who in fact would handle the distribution, whether you would have a liquor type of model, with presumably, Seagrams and Guinness and those people handling the distribution, or whether you would have a chemical model, or a drug model, where the pharmacies in fact would set things up and they would control the distribution, or whether you would have a cigarette model where MacDonalds would sell Acapulco gold and have that as their brand name.

Senator Croll: What did you decide on?

Mr. Copeland: I personally do not care. One of the suspicions we had originally when CODA was set up, which is the Committee on Drug Abuse set up by the pharmaceutical organization, was that that was to be their entry, eventually, into getting control of marihuana distribution. I have been told that the cigarette companies have done some studying on it, so that they could at some point or another put forward their proposals concerning distribution. Presumably the liquor companies have given some thought to it as well, and would like to get their hands into distribution when and if we get to that point.

Senator Croll: They are not doing badly in their own business; I did not know they were looking further afield. Now, let us see where we are going. You are suggesting legalization. I presume, for the purpose of manufacturing, it would be under federal control?

Mr. Copeland: That does not bother us. That, with all respect, is your problem, or the problem of the House of Commons. What I presume the government would be interested in would be taxation.

Senator Croll: Then the purpose of legalization, as you suggest it, is that it will lessen use?

Mr. Copeland: No. I do not think it will lessen use. I do not think it will significantly increase use, either. I think it will however, allow you to have controlled samples, or controlled strengths, of the substances available.

Senator Asselin: The quality?

Mr. Copeland: Yes. The quality control will be much better.

Senator Croll: It will give us better dope, is that what you are saying?

Mr. Copeland: No. I am saying that you will get dope of known strength, not so much in relation to cannabis, but in relation to other available chemicals. This is a very great problem. If you buy mescaline, for example, in the street, you get whatever they happen to have dumped into the mescaline that particular week.

Senator Croll: Well, we are talking about something else for the moment. You are talking about legalizing it. By legalizing it we make it more available, I presume. Do we not make it more legally available?

Mr. Copeland: My own view is that it could not be more easily available than it is now.

Senator Croll: Then what is the purpose of legalizing it?

Mr. Copeland: Because we are wasting a lot of time, money and effort in dealing with marihuana prohibition, or cannabis prohibition, which is not, in my view, an effective prohibition. The government is distracting itself from dealing with more serious drugs, and control of more serious drugs.

Senator Croll: Would you dispute the word of the Medical Association, who do not agree with your point of view?

Mr. Copeland: In what respect?

Senator Croll: In respect to distribution, legalizing and making it available on an easier basis?

Mr. Copeland: Did the CMA say that its availability in marihuana control stores would make it more accessible to young people?

Senator Croll: They said they were opposed to legalizing it on almost any ground.

Mr. Copeland: There are serious problems with its abuse and even with its use. I do not believe, however, that the present or the proposed legislation will change the use.

Senator Croll: You are there in contact with it in your practice and with other lawyers. They are young fellows thinking about this. Do they not consider the social aspects of it and what suggestions they could make to render it less available for use and less likely to harm? How can we do something in this committee which will give us some social result?

Mr. Copeland: My own view is that there is some degree of sophistication among some drug users and that the effect of saying the government regards cannabis as less serious than metamphetamine and heroin will in fact have an impact on them. They will say cannabis is not all that bad and, if they are going to use any drugs, they may restrict themselves to use of cannabis or alcohol, both of which in my view, just in use, are relatively harmless substances. In abuse they can both be very harmful. I am reluctant to continue a situation in which the government declares cannabis to be as serious as metamphetamine, which is just not the case. To have legislation on the books which says that cannabis is more serious than metamphetamine is to my mind saying to the user exactly that, that the government does not regard it as different, nor should they.

Senator Croll: As a result of government research and information it declares that it is likely to be more harmful and for that reason we need this legislation?

Mr. Copeland: That marihuana is likely to be more harmful than amphetamine?

Senator Croll: No, they speak of cannabis.

Mr. Copeland: Cannabis is not in my view more harmful than metamphetamine. I am speaking of speed. There is no comparison between a person who smokes a marihuana cigarette and the person addicted or strung out on the use of metamphetamine. They are totally different animals. It is like comparing someone who has three glasses of beer after work to someone addicted to heroin. In my mind it is a totally different situation.

Senator Croll: Then why do we deal with it in context collectively and look upon them as drugs, period?

Mr. Copeland: I believe the government to be in error in that. Cannabis should not be dealt with in the legislation. If its use could be effectively prohibited together with the use of alcohol and tobacco, I would say fine, prohibit them and I will do without my beer. I do not smoke anyway, so I do not care about the tobacco. All those substances are harmful. It is not a question of the degree of harm, but of being unable to prohibit the use, whether the attempts at prohibition would be more harmful than leaving them available. In my view that is what the Le Dain Commission said.

Senator Godfrey: I have a comment on Senator Croll's statement with respect to the CMA evidence. The doctors did agree that they had more problems with the excessive use of coffee than with marihuana.

Senator Croll: You are injecting something new when you say coffee. I did not hear that.

Senator Godfrey: The rest of us heard it.

The Chairman: They mentioned caffeine.

Senator Godfrey: They said 15 cups of coffee causes problems.

Senator Asselin: I wish to congratulate the witness on his very courageous submission, Mr. Chairman.

The Chairman: He agrees with Mademoiselle Bertrand.

Senator Asselin: I do agree with his submission. I believe you indicate that the sentences now being passed by the courts are less severe than those contained in this legislation. Am I right in that?

Mr. Copeland: Speaking of Toronto, which preface I believe to be important, generally speaking the penalties imposed would fall into the range of this bill. They are less than the maximums provided by present legislation. Outside Toronto, in places such as Kitchener and Bracebridge, second offenders are going to jail for 30 days for possession.

Senator Asselin: In Quebec the penalty for simple possession is a fine rather than imprisonment.

Mr. Copeland: That happens in the courts in Toronto, with absolute or conditional discharges and moderate fines.

Senator Asselin: You said it takes a long time for the cases to be heard by the courts in Toronto. Does it sometimes happen that your clients prefer to plead guilty rather than wait so long to have their cases tried?

Mr. Copeland: I have some clients who wish to plead guilty immediately.

Senator Asselin: Does this happen in cases in which they are not guilty?

Mr. Copeland: I do not have many clients pleading guilty if they are not guilty.

Senator Asselin: If the sentences are not severe, as you said, some would prefer to plead guilty rather than wait for a year or a year and a half.

Mr. Copeland: Except that there are advantages to waiting for a year to a year and a half. One of the aspects referred to in the submission is repackaging lives. I used to have a client, who is now represented by someone else, who was arrested with 70-odd pounds of marihuana in Toronto. His case, to use the vernacular, was totally bang-up, they had got him. Had he pleaded guilty immediately after his arrest, before the analysis could have been carried out, I believe he would have received a high reformatory term of perhaps two years less a day or perhaps even a low penitentiary sentence, of three years. I expect it would take a year and a half to get him to court for the trial. By that time he will be gainfully employed and have a year and a half of clean living on the street or in his community. It would then be quite likely that rather than a two-year sentence he would receive a six-month sentence. The time delay will have led him to repackage his life. He will be able to appear before the judge and say he has rehabilitated himself and got out of that difficulty. The judge would then be sending him to jail because the Court of Appeal says he must for the purposes of deterring others from a serious offence. So there are great benefits that accrue to defendants by the delay. I have seen plea bargaining come up with amazing results in relation to sentences in what were originally very serious cases.

Senator Asselin: Would you prefer a provision included in the bill that for the first offence of simple possession there would be no criminal record? Would you prefer that to having to apply for a pardon?

Mr. Copeland: If that is the best I can get, certainly. I would like it to go much further, but if that is all that is going to come out of the legislation, it is better than having to apply for a pardon. In my opinion it is significantly better administratively. Our first position is legalization; our second position is elimination of criminal records for possession, and keeping the fines fairly moderate.

The figure in the submission is \$5.46 a day as being the rate at which you can send somebody to jail. The Government of Sweden and other Scandinavian governments have a concept whereby you pick out the number of days that would be appropriate and multiply them by the amount the individual is earning. In other words, if an appropriate sentence is 10 days, and the chap earns \$100 a day, the fine would be \$1,000; if an appropriate sentence would be 15 days, and the chap earns \$10 a day, the fine would be \$150. That, to my mind, is a fair way of doing it, as opposed to saying, regardless of the individual's station in life, that the fine will be \$1,000 or, in the alternative, six months, because the middle class user will ask for time to pay, write a cheque, and go and borrow the money to pay for it, whereas the 16-year old, 17-year old, or 18-year old is likely to spend the entire six months in jail. I am very reluctant to see such a discrepancy in the law.

The Chairman: I must say, I am very much in agreement with what you have just said, Mr. Copeland.

Senator Asselin: One of your proposed amendments as set out in the appendix to your brief, Mr. Copeland, is to delete section 50(2). Section 50(2)(b)(ii) states:

...except that subparagraph (b)(ii) does not apply where that person, after having been found guilty of the offence, establishes that he imported or exported the cannabis for his own consumption only.

Does that not shift the burden to the accused to prove his innocence instead of the burden being on the crown to prove his guilt?

Mr. Copeland: Yes, that is a reverse onus situation.

Senator Asselin: Would you elaborate on that? We have had representations from some lawyers who are unhappy and upset with that provision.

Mr. Copeland: It is no different than the reverse onus situation which presently exists under the Narcotic Control Act and the Food and Drugs Act with respect to charges of possession for the purpose of trafficking. If the crown establishes possession, then the onus is on the accused person to establish, on a balance of probabilities, that he was not in possession for the purposes of trafficking. That is very much what this subsection states. It says, in effect, that you have to establish it was your own personal cannabis. I think you would be left in the same situation if importing were to be included in the definition of trafficking. If you were found in possession of two pounds of marihuana at the airport and could establish that it was for your own personal use, then you would only be found guilty of possession rather than being found guilty of possession for the purposes of trafficking. I do not like the reverse onus. Defence counsel, generally speaking, do not like the reverse onus, and certainly the accused person does not like it.

Senator Neiman: I can appreciate that you do not like the reverse onus situation, but basically do you think that the crown is justified in this particular type of case in maintaining that onus on the accused?

Mr. Copeland: No. Again, you would have to attend a trial on a charge of possession for the purposes of trafficking and observe what happens. What happens, generally speaking, is that the accused person, if he has admitted possession or has not testified he did not know anything about the drug, is then in a position to take the witness stand and say it was his own smoke, or something to that effect, and sometimes they call an expert witness to discuss how much people buy, how much of a saving one can realize by buying a pound as opposed to 16 individual ounces over the course of, say, six months, and then the crown will usually call a police officer who has a good deal of expertise in drug matters and he will testify as to the mode in which people buy and what indicia there are of trafficking—whether it be baggies, scales, money, or anything along that line—and then you end up weighing the two things. As it now stands, the accused has to establish on a balance of probabilities that it was for his own use, and if he does not, he is convicted. I think the crown could establish in the circumstances of the vast majority of cases that a person had the substance in his possession for purposes of trafficking. If there is an even situation, I think the accused should be acquitted. We are really only talking about borderline situations.

I had one case where the chap had just received an inheritance from his grandfather and, in celebration, he went out and bought a pound of marihuana, managing to save probably 50 to 60 per cent of the purchase price had he bought it in individual lots. He was acquitted of the charge of possession for the purposes, but that is a fairly rare case. Usually, on trafficking charges in the marihuana situation you get baggies and the other indicia. I would prefer to see the onus the other way. I do not think the crown needs it to get convictions.

Senator Neiman: Following on what Senator Croll said earlier, I do not think there is any particular feeling on the part of the government that cannabis, per se, is more dangerous than speed, or some other drugs you mentioned. I do not think that was the intent of removing cannabis from the Narcotic Control Act. Apart from that, in arriving at your recommendation for total legalization, did you put your minds at all to the question of how we could monitor this type of thing in Canada vis-à-vis the U.S. border and the other problems that would be involved?

Mr. Copeland: If your concern is with Americans coming up here and consuming cannabis, that will certainly happen.

Senator Neiman: I am concerned about trafficking.

Mr. Copeland: It will influence the American problems. The U.S. will have a country to the north of it in which the possession of cannabis products is legal.

Senator Neiman: Would it not cause us problems, too?

Mr. Copeland: I do not think so. We will have a few more Americans coming up here to buy cannabis and trying to smuggle it back into the United States, thereby reversing the flow which generally, I understand, is in the other direction. I do not see that it would cause Canadians problems to have Americans coming up here to purchase cannabis to take back to the United States to sell. It would be an American problem and the Americans would have to deal with it.

The Chairman: You do not think the United States has enough problems?

Mr. Copeland: I think the United States has a significant number of problems, Mr. Chairman, but I personally think that if both countries pass somewhat similar legislation the governments could get the social agencies, including the police, to deal with more serious problems that are around.

Senator Neiman: Do you not think that, from a practical point of view and from the point of view of our being parliamentarians, we would come under a great deal of pressure not to legalize it, even if we felt it to be a good idea?

Mr. Copeland: I think the Americans would exert a large amount of pressure. You have the single convention of the UN on marihuana to which Canada is a signatory, and that is going to create problems.

Senator Neiman: In effect, it is quite impractical at the moment, I think, within the context of today to consider it. I agree with you. This is not to disagree with you. I do not feel that our present law has really corrected the problem of abuse or over-use of marihuana, but from a practical point of view, and a legal point of view, the suggestion of legalization is more difficult than we can cope with right now.

The Chairman: Thank you, Mr. Copeland, on behalf of the committee. The committee will now adjourn until 11 a.m. on Tuesday next. We shall be sitting in the morning and afternoon. The morning witness will be Dr. Kalant of the Addiction Research Institute of Toronto. In the afternoon we shall hear Professor Graham Parker and a group from Osgoode Hall. The committee will now meet briefly *in camera*.

The committee continued *in camera*.

APPENDIX "A"

CANADIAN CRIMINOLOGY AND CORRECTIONS
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Vice-President (Ontario Region) Vice-Président (région de l'Ontario)		NEW BRUNSWICK NOUVEAU-BRUNSWICK
M. le juge Jean-Pierre Beaulne Cour provinciale, Division Criminelle Edifice Rideau Trust 1, rue Nicholas Ottawa, Ontario (1975) K1N 7B6		Gérard Allard, Regional Correctional Administrator, Department of Justice, P.O. Box 5001, Campbellton E0K 1B0 (1977) John Bennett, Director, Dorchester Penitentiary, Dorchester (1976) Justin P. Sullivan, Regional Parole Representative, National Parole Service, 4th Floor, Terminal Plaza, 1222 Main Street, Moncton (1975)
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Derek Dempster, Assistant Director, The John Howard Society of Quebec, Inc., 1647 St. Catherine Street West, Montreal 108 (1977)

Maurice Gauthier, Sous-ministre associé, Ministère de la Justice, 225 est, Grande-Allée, Québec (1977)

Guy Lemire, Directeur, Institution de Cowansville, Service Pénitentiaire Canadien, Ministère du Solliciteur général, Cowansville (1977)

Jean Ratelle, Inspecteur, Police Communautaire Urbaine, Montréal (1977) (53 Place Rupert, Repentigny, P.Q.) (1977)

F. W. Baril, directeur, Collège du personnel de correction, Service Pénitentiaire Canadien, Ministère du Solliciteur général, Ville de Laval (1976)

Michel Bélanger, directeur, Service de Probation Juvénile, Ministère des Affaires Sociales, 367 boul. Charest est, Québec (1976)

Pierre Brien, directeur de la recherche, Commission de Police du Québec, 2050, boulevard St-Cyrille O., Ste-Foy, Québec 10 (1976)

Gérard Cyr, Service de Probation, Ministère des Affaires Sociales, 6161 rue St-Denis, Montréal (1976)

Luc Genest, directeur régional, Service national des Libérations conditionnelles, 685, rue Cathcart, Montréal (1976)

André Normandeau, directeur, École de Criminologie, Université de Montréal, C.P. 6128, Montréal 101 (1976)

M. le juge Rodolphe Roy, Cour de Bien-être social, 350 est, rue St-Cyrille, Québec 4 (1976)

Jean-Luc Côté, directeur, Service de Réadaptation Sociale Inc., 50 rue St-Jean, Chambre 156, Québec 4 (1975)

Maurice Gosselin, directeur, Le Gentilhomme Rembourseur, 400 avenue des Laurentides, Centre Industriel, Beauport (1975)

Pierre Landreville, professeur, École de Criminologie, Université de Montréal, case postale 6128, Montréal 101 (1975)

Réal Ouellet, t.s.p., directeur, Service de Probation, Ministère de la Justice, Hôtel du Gouvernement, Québec (1975)

ONTARIO

M. le juge Jean-Pierre Beaulne, Cour provinciale, Division Criminelle, Édifice Rideau Trust, 1, rue Nicholas, Ottawa K1N 7B6 (1977)

Glenn H. Carter, Director of Planning and Research, Ministry of Correctional Services, 443 University Avenue, Toronto (1977)

H. Elibrachy, 20 Edgecliffe Golfway, P.H. 1, Don Mills (1977)

Brigadier A. MacCorquodale, Director, Correctional Services Department, Salvation Army, 37 Dundas Street East, Toronto 205 (1977)

Gordon MacFarlane, Assistant Director, John Howard Society of Ontario, 168 Isabella Street, Toronto 5 (1977)

Paul Gascon, Executive Secretary, Solicitor General Component, Public Service Alliance of Canada, Room 1006, 233 Gilmour Street, Ottawa (1976)

William Outerbridge, Chairman, National Parole Board, 340 Laurier Ave W., Ottawa (1976)

Edward Tollefson, Legal Research & Planning Section, Department of Justice, Justice Building, Wellington Street, Ottawa (1976)

Dr. Terrence Willett, Department of Sociology, Queen's University, Kingston (1976)

Inspector D. K. Wilson, Legal Branch, Room H-313, RCMP Headquarters, 1200 Alta Vista Drive, Ottawa K1A 0R2 (1976)

Miss Ruth Addison, 3807 Revelstoke Drive, Ottawa K1V 7C2 (1975)

John Braithwaite, Deputy Commissioner, Canadian Penitentiary Service, Department of the Solicitor General, 340 Laurier Ave. W. Ottawa (1975)

Frank Chafe, Director, Government Employees Department, Canadian Labour Congress, 2841 Riverside Drive, Ottawa K1V 8N4 (1975)

Yvon Guindon, Executive Director, Chimo Association, 221 Primrose Ave., Ottawa K1R 6M7 (1975)

Miss Rosemary Hodgins, Lawyer, 17 Heather Street, Toronto M4R 1Y2 (1975)

Judge Terence M. Moore, Provincial Court, Family Division, Judicial District of York, 311 Jarvis Street, Toronto, Ontario M5B 2C4 (1975)

MANITOBA

Eric G. Cox, Director of Corrections, Department of Health & Social Development, 139 Tuxedo Avenue, Box 17, Winnipeg R3C 0V8 (1977)

Dr. Stuart Johnson, Department of Sociology, University of Manitoba, Winnipeg (1977)

R. L. Untereiner, District Representative, National Parole Service, Room 206, Federal Public Bldg, Princess Avenue & 11th St., Brandon (1977)

Inspector G. Supeene, St. James-Assiniboia Police Department, N.W. Lyle & Portage, St. James (1976)

SASKATCHEWAN

Anthony Lund, Director, Provincial Correctional Centre, Box 617, Regina (1977)

Dr. Frank E. Coburn, Department of Psychiatry, University of Saskatchewan, Saskatoon (1976)

Stewart M. Hunter, Executive Director, John Howard Society of Saskatchewan 2-1846 Scarth Street, Regina (1976)

Dave Simpson, Supervisor, Adult Probation, Department of Social Service, Prince Albert (1976)

ALBERTA

Kenneth Hollington, Mount Royal Junior College, 4825 Richard Road S.W., Calgary T3E 6K6 (1977)

G. P. Spiro, District Representative, National Parole Service, 132A-9th Avenue S.W. Calgary (1977)

Phil Crosby-Jones, Training Officer, Calgary Police Dept., Calgary (1975)

Judge H. Rolf, Q.C., Senior Provincial Judge, Court House, Edmonton (1975)

John Wilson, Training Coordinator, Alberta Corrections Service, Department of the Attorney General, Edmonton (1975)

BRITISH COLUMBIA

COLOMBIE-BRITANNIQUE

Judge Lawrence A. Brahan, Chief Judge of the Provincial Court of B.C., 800 West Georgia Street, Courthouse, Vancouver (1976)

E. W. Epp, Deputy Minister, Corrections, Department of the Attorney General, Parliament Buildings, Victoria (1976)

Inspector R. M. Heywood, RCMP, North Vancouver (1976)

Mrs. Ethel M. Allardice, Executive Director, Elizabeth Fry Society of B.C., 1135 East Hastings Street, Vancouver 6 (1975)

Allan A. Byman, Director, Diagnostic Centre, Canadian Penitentiary Service, P.O. Box 10058, Pacific Center Ltd, 700 West Georgia St., Vancouver 1 (1975)

James Murphy, Deputy Regional Director, Inmate Program, Canadian Penitentiary Service, P.O. Box 10058, Pacific Center Ltd, 700 W. Georgia St., Vancouver 1 (1975)

TERRITOIRE DU NORD-OUEST

NORTHWEST TERRITORY

C. F. Wilkins, Director of Corrections Services, Department of Social Development, P.O. Box 566, Yellowknife X0E 1H0 (1976)

TERRITOIRE DU YUKON

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W. A. Milner, Superintendent, Whitehorse Correctional Institution, Department of Health, Welfare and Rehabilitation, Box 2703, Whitehorse, Yukon (1976)

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APPENDIX "B"**THE LAW UNION OF ONTARIO
PROPOSED AMENDMENTS TO BILL S-19**

Section 47 Amend the definition of trafficking so that part (a) will now read:

"Trafficking means to manufacture, sell, administer, transport, deliver, distribute, import or export."

Section 48 Amend S. 48(2)(a) and (b) so that they will read:

(a) for a first offence to a fine of not more than \$100.00 or, in default of payment of the fine, to imprisonment for a term of not more than ten days; and

(b) for a subsequent offence, to a fine of not more than \$200.00, or in default of payment of the fine, to imprisonment for a term of not more than twenty days.

Add a new S. 48(4)

(4) A conviction under this section shall not be deemed a criminal conviction.

Section 49 Amend S. 49(3)(a) so that it will now read:

"Upon summary conviction to a fine of not more than \$1,000.00 or to imprisonment for a term of not more than six months, or to both."

Section 50 Delete S. 50(2)

Section 51 Delete S. 51(2)

Section 52 Amend S. 52 so that it will now read:

"For the purposes only of the identification of Criminals Act, a person charged with or convicted of an offence punishable on summary conviction under Section 49 or 50, shall be deemed to be charged with and to have been convicted of an indictable offence."

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

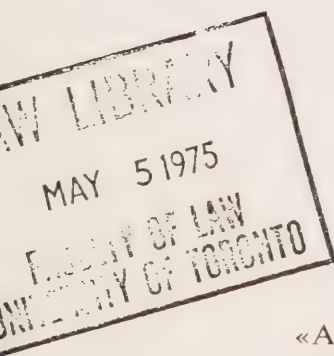
Issue No. 15

TUESDAY, MARCH 25, 1975

Tenth Proceedings on Bill S-19, intituled:

«An Act to amend the Food and Drugs Act, the Narcotic
Control Act and the Criminal Code»

(Witnesses and Appendix: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON LEGAL
AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Walker—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Senator Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate.

Minutes of Proceedings

Tuesday, March 25, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Asselin, Croll, Fergusson, Godfrey, Langlois, McGrand, McIlraith, Neiman, Prowse and Quart. (11)

Present but not of the Committee: The Honourable Senators Smith and Sullivan.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee continued its examination of Bill S-19 intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

The Committee heard Dr. Harold Kalant, M.D., Ph.D., Associate Research Director (Biological Studies), Addiction Research Foundation, Toronto, and Professor, Department of Pharmacology, University of Toronto.

On Motion of the Honourable Senator Prowse it was *Resolved* to include in this day's proceedings "Probable Consequences of Different Social Policies on Cannabis" presented by Dr. Kalant. The table, and the notes relating thereto, are printed as an Appendix.

At 12:45 p.m. the Committee adjourned until 2:00 p.m.

At 2:20 p.m. the Committee resumed.

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Fergusson, Godfrey, Langlois, McGrand, McIlraith, Neiman and Prowse. (9)

Present but not of the Committee: The Honourable Senator Sullivan.

The following witnesses were heard by the Committee:

Professor Graham Parker, Osgoode Hall Law School, York University, Toronto;

Mr. J. Patrick Horton, Lane County District Attorney, Eugene, Oregon, USA.

At 4:25 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard
Clerk of the Committee

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, March 25, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 11.00 a.m. to give further consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, the committee continues its study of Bill S-19 this morning. Our witness is Dr. Harold Kalant, Associate Director of Research, Biological Studies, Addiction Research Foundation, Toronto. I am going to ask Senator Sullivan—who recommended to the committee very urgently that we hear Dr. Kalant—to introduce him. This will perhaps also satisfy Senator Croll, who always asks about a witness' qualifications. Would you do so, Senator Sullivan?

Senator Sullivan: Mr. Chairman, honourable members of the Senate, before I formally introduce Dr. Kalant, may I say that I hope you all read the *Globe and Mail* this morning and saw that you can allow your cirrhosis to proceed in any way it wants and he will be able to take care of it though the research that has been done. It is on the front page: "Treatment reported for cirrhosis caused by alcohol".

Dr. Kalant is Associate Director of Research, the Addiction Research Foundation of Toronto, and his contributions, in this field have been tremendous. I took his name in vain when I spoke before the Senate on this subject. Internationally, he is recognized as one of the leading men. I have no hesitation in stating that he has a lot of common sense attached to this subject and he will present it in such a way that both medical men and lawyers, and even others, will understand it.

Senator Prowse: And even senators.

Senator Sullivan: Yes.

The Chairman: Thank you, Senator Sullivan. Dr. Kalant, would you proceed now?

Dr. Harold Kalant, Associate Director of Research, Biological Studies, Addiction Research Foundation, Toronto: Mr. Chairman, honourable senators, ladies and gentlemen, I would like to begin by thanking this committee for their kind invitation to present a brief which, though the invitation was extended to my wife and myself, also includes the thinking and views of a number of our colleagues, both at the Addiction Research Foundation and at the University of Toronto.

As scientists or physicians engaged in the study of medical, biological, psychological or social aspects of alcohol and drug use, and of a wide variety of problems related to both medical and non-medical use, we welcome this oppor-

tunity to contribute to your deliberations on Bill S-19. We wish to make clear at the outset that this brief does not represent an official policy statement of the Addiction Research Foundation of Ontario, nor of the Faculty of Medicine of the University of Toronto which, for obvious reasons, are not in the business of indicating policy decisions with respect to this law. It is a personal statement by the signatories, and should be considered in that light.

We are aware of the deluge of information and opinions to which you have already been subjected, and the apparently irreconcilable serious contradictions contained in some of the testimony you have heard.

Moreover, some of the briefs already presented to you have in effect reopened the whole discussion, not only on the proposals of Bill S-19 but on practically all of the policy options available to the government, from strict enforcement of the present law on marihuana to complete legalization of sale under government control.

What we want to present today, therefore, is not another mass of detailed information or any special argument in favour of one policy or another policy, but rather we hope that we can be of most use to you by providing an explanation of the sources of apparent contradiction in the testimony that you have already heard, and what we hope may be a useful perspective and a context in which to view it. Finally, we would offer a suggestion for a form of legislative experiment which may permit a greater degree of consensus than now appears to exist.

The decision which Parliament must ultimately make on Bill S-19, as on any other drug control measure, is essentially a cost-benefit analysis which involves four elements: the benefits derived from cannabis use, the cost—medical, social and otherwise—of the use of the drug, in this case cannabis; the benefits derived from legal controls of cannabis use; and the costs—social, economic and other—of applying those controls.

This is a difficult analysis to make under the best of conditions, but it is made worse by the fact that there are a number of complications. The first is that you cannot do the analysis only by looking at the presently available evidence under one set of circumstances, one legal policy at one point in time. That is so because if the costs of cannabis use are measured in terms of damage to health or social function, then the magnitude of those costs is going to appear very low as long as the use is low. On the other hand, if the enforcement of the law, or the law, contributes to making the use low, then the costs of the law enforcement will be obvious while the presumed benefits will be rather less obvious, because one will be looking for something that is not happening.

Therefore, what one has to do is to compare the costs and benefits not only under present circumstances but also under any new set of circumstances which might result from any given change in the law.

The second complication is that the comparison involves disparate things. We would emphasize really that it is as difficult to balance the cost of the law against the cost of health damage by drug use as it is to compare oranges and squirrels. They are different things and how one weighs them, on what scale, is an extremely subjective matter. You could try to find a common yardstick in economic terms by balancing, for example, the costs of health services incurred by drug-induced health problems, against the economic cost of legal enforcement, but that is only one measure which leaves out many important considerations.

The third complication, which follows from this, is that no two people will draw the balance in exactly the same way, because we are dealing not only with the balance of factual evidence but also with a balance of personal values attached to any given set of facts. In the brief, we propose to examine, first, the validity of the factual evidence as it relates to the various costs and benefits, and then to look at the different kinds of balance, of value balance, that might be found under the whole range of policy options which is open to the government.

First of all, as far as the available evidence is concerned with respect to the benefits of cannabis use, the principal benefit obviously is the pleasure or enjoyment obtained by the user. There is nothing unique to cannabis about this. This is true of alcohol or any other drug which is used for modifying mood and perception. Since pleasure is a subjective phenomenon, it is not easy to measure it in terms which permit it to be balanced against the costs. But it is interesting to do a bit of a comparison. In other words, is the pleasure derived from cannabis use comparable in any way to the pleasure derived from the use of alcohol? I think the balance of evidence would have to be "yes, closely similar and certainly much more similar to alcohol than it would be to opiates or to amphetamines or to cocaine, for example."

This could be gauged both by inability of many users, experienced users, in carefully done experiments, to tell the difference between the two when presented blind, in such a way that they did not know which was an active drug and which was a sham. There is also the fact that in animal experiments the animals will not endure punishment or work to obtain alcohol or cannabis, where they will work very hard to obtain opiates, cocaine, amphetamines. So cannabis is much closer to alcohol than to the other drugs, I would stress, in terms of the character of its effects.

There could be another benefit to cannabis use in totally different terms, if cannabis were sold legally by a government monopoly, and that would be in the form of profits or taxes accruing to the government and to the producers and vendors from the sale, as now occurs with the legal sale of alcohol. I do not think that point needs to be emphasized. I would, however, emphasize that the use of cannabis has been shown now over and over again not to replace the use of alcohol but to be added to it.

Therefore, the amount of revenue which might accrue to the government through the legal sale of cannabis, if it were promoted, advertised, socially accepted, priced and encouraged in the same way that alcohol use has been, could be very large indeed. Just to illustrate this, alcohol sales in Canada during 1972 reached a total retail value of \$2,090,244,000 of which approximately 70 per cent went as net revenue to all levels of government.

So that, in somewhat cynical but monetary terms, one might anticipate comparable net benefit to the government

from the legal sale of cannabis under the circumstances which I mentioned.

The costs of the use of cannabis, on the other hand, like those of alcohol and other drugs, may consist of physical or mental injury to the user, social damage and monetary costs both to the user and to society at large.

I am not going to go into the whole range of medical evidence which has already been submitted to you, covered by many witnesses; except to recall that the possibility has been raised of such things as permanent brain damage, impaired immune response to infections, lung injury, hormonal disturbances, chromosome damage and disturbances of a variety of basic cellular metabolic processes, such as the synthesis of nucleic acids and proteins. I might add for Senator Sullivan's special benefit, there are now some recent reports of vestibular damage in chronic heavy users as well.

Senator Prowse: What is vestibular damage?

Dr. Kalant: That is damage to the organs of balance in the inner ear.

On the other hand, other clinicians and investigators have stated that there is no convincing evidence of physical or mental damage caused by cannabis. The disagreement on this point is at times so acrimonious that it goes beyond mere argument about fact. I would just mention in this connection that when a couple of years ago Kolansky and Moore first reported the possibility, based on clinical observations of some of their patients, that there might be irreversible brain damage in some chronic heavy users, another psychiatrist in the United States expressed publicly the opinion that Kolansky and Moore should be imprisoned for having made such a suggestion. I would submit that this is not exactly a case of scientific evaluation of evidence.

The problem, really, not only for scientists but for you and the public at large, is to know how to evaluate these contradictory opinions. What accounts for such diametrically opposed opinions? I would suggest that there are a number of reasons which make it less puzzling than it might appear. The first reason is an actual scientific disagreement which usually occurs at an early stage in research, when there is not yet enough information gathered to answer some vital questions. A good example of this is the case of chromosome damage. If you look at the various papers which now divide roughly evenly—there are about as many which do report chromosome damage in chronic heavy users as there are which do not—if you look at the various studies you find that practically no two of them have been done in exactly the same way. A number of other factors besides the cannabis use itself may be determining the outcome.

These include, for example, differences in age of the cannabis users and the non-using control groups; the use of other drugs, even including caffeine, which may not have been taken into account; exposure to X-rays and other sources of radiation; infections; and differences in technique of culturing and examining the cells.

I would offer as a personal opinion that the accumulating evidence seems to be pointing towards a conclusion that heavy drug use is associated with a higher frequency of chromosome abnormalities, but that this is not specific or unique to cannabis. It can occur with a variety of other drugs and the common element is heavy use, not the specific identity of the drug.

Another point to note is that the chromosomes under study are in white blood cells which have been grown in tissue culture, and the changes which occur in them do not necessarily occur, for example, in the testes or ovaries so that one cannot conclude that chromosome abnormalities in the blood cells will necessarily mean genetic abnormalities in the offspring.

This probably will be resolved over the course of the next few years, because better methods are constantly being evolved. The only thing I would say here is that good research takes time. One cannot do crash programs on this kind of study. It is easier to do a crash program to land a man on the moon than it is to answer biological problems.

The second reason for disagreement in the evidence relates to the matter of quantities.

You have heard in previous submissions, for example, that cannabis, or THC its active ingredient, inhibits nucleic acid or protein synthesis in brain or testicular tissue examined in the test-tube or in single celled organisms growing in cultures. The findings themselves are probably quite clear, but the studies have been criticized on the ground that the concentration of drug added to the test systems are as much as 1000 times as high as would occur in the blood of even moderately heavy users.

This does not in itself make the findings invalid, because, given the concentration in the blood, we do not really know what the concentration in the tissues is at the same time at the sites where the nucleic acid and protein synthesis are going on in the living body. Nevertheless, it is obvious that there can be no gross general disturbance of the synthesis of nucleic acids and proteins, because, if there were, these users would be in an extremely serious state of health, since a variety of other tissues in which rapid synthesis of these substances is going on would show serious damage, which has not in fact been found.

It is perhaps worth recording that when scientists do studies in the isolated system in the test-tube they are looking for positive findings from which they can get clues as to mechanisms of action. So they are often using concentrations which are much higher than would be relevant in the living person in order to find what are possible effects. Then it is necessary to find which of these *possible* effects are in fact *probable* in the living person.

This is clearly illustrated by the studies on malformation in newborn offspring of animals or humans treated with cannabis or THC. In the animal experiments the doses needed to produce malformations are as much as 100 times or more the doses which are used by human beings.

Disagreement, on the other hand, can also arise in the opposite direction, when people who do not want to see harmful effects choose to ignore valid evidence and cite, instead, evidence which is inappropriate for answering the questions involved. This is perhaps best illustrated by reference to the question of cannabis and brain damage.

The first clinical observations which raised this possibility, as I noted earlier, were greeted by a storm of protest in some quarters. Yet, in fact, in the laboratory we have been able to show findings which strongly support these clinical observations.

In some animal experiments, rats were, over a six-month period, given a daily dose of cannabis large enough to cause intoxication of at least 3 to 4 hours duration every day. This was not enough to harm their general health. They gained weight, they grew well, they looked well.

However, after this drug administration was stopped completely and the drug had been cleared from the body, they were then tested for their ability to learn new performances, new tasks. They were found, as much as six months later, to show a deficiency in learning ability as compared to animals which had been treated in all respects in the same way except that they did not receive a drug. This loss has remained permanently, and our current findings indicate that it is accompanied by abnormal electrical activity in the brain, which is highly suggestive of permanent cellular damage.

Several points should be emphasized in connection with these experiments. The first thing is that only heavy, prolonged use produces this. Half the dose given for half the length of time did not produce it, and this is a critical point to remember, namely, that you cannot talk about cannabis doing this or that. You have to say how much cannabis, for how long, will do what. Another point is that a parallel group of rats, treated to a comparable degree of intoxication with alcohol, also showed learning deficiency which lasted. In other words, this is not a unique effect of cannabis. It has also been shown with heavy, chronic use of a variety of drugs. The third thing is that it was in fact an action of the drug; it was not due to malnutrition or to infections or to injury or to low socio-economic status or to any of the other arguments brought up by people who choose not to accept clinical suggestions of brain damage in heavy users.

Finally, the rats were adults with fully developed nervous systems, and we think this is important because there is evidence of various kinds that animals with immature nervous systems are more susceptible to damage by drugs and other noxious influences than animals with fully developed nervous systems.

How can one reconcile such findings of clinical and experimental indications of brain damage with the results of studies such as those reported recently from Jamaica and from Greece, which reported that there were no signs of intellectual or memory impairment in long-term heavy users of hashish as compared to non-users? I think the most likely answer is that the groups of users and non-users examined in these studies were simply inadequate for the purpose of answering the question. There were only 10 to 40 subjects per group, which is far too little to detect a complication that may effect only a few per cent of users.

If we use alcohol—and we have a much better knowledge of alcohol—as a guide, we know that only a few per cent of heavy users will get brain injury, so that we can conjecture that perhaps five per cent or so of chronic heavy users of cannabis might also develop it. If you have a group of ten users, that would mean that perhaps one-half of one user might show signs of brain damage. Obviously the group is far too small to permit any meaningful conclusions.

A further problem is that the investigators often look at the wrong groups. In both the Jamaican and Greek studies the examinations were done on poor, subsistence level farm workers, fishermen and day labourers whose activities involved minimal intellectual demand, and whose measured intelligence levels in that group of subjects, even among the non-users of cannabis, were significantly below those of the general level of the population. If you are looking for subtle changes in intellectual performance, memory, learning ability and the like, how are you going to find it in a group whose whole life pattern makes least

demand on the very things that we are attempting to measure?

A large scale study of students at the University of California in Los Angeles a few years ago also led to the conclusion that regular, even daily use of marihuana, was not associated with impaired academic performance or with loss of motivation; but as the authors themselves noted, their studies included only those who had remained at the university and not those who had failed or dropped out. How then would you expect to find a significant loss of intellectual function or motivation if those with the greatest likelihood of showing such loss were automatically excluded from the study?

There is a follow-up which was published in November of 1974 by the same group, and I will refer later, perhaps, if this arises in the question period, to its findings, which show in fact that there was, in the opinion of the users themselves, a poorer academic adjustment among the heavy regular users than among the light or non-users.

There was another recent study in fact from UCLA by a different group, using a less self-selected group of subjects which did find significantly poorer learning ability in a group of heavy, most of them daily, marihuana smokers, than in a matched group of light smokers.

These difficulties that I have cited in interpreting evidence illustrate a basic source of confusion which arises from a very common failure to recognize the type of conclusions and the values which should be looked for in experimental studies *versus* clinical observation. Experimental studies are usually designed to clarify mechanisms by which certain effects are produced. They concentrate on clear, reproducible results than can be brought about with a high measure of statistical reliability in small groups of subjects, maybe 10, 20—very rarely a hundred—subjects per group, deliberately using a range of different doses of the drug so that you can find what range will produce a reliable result, and then you look to see how the result is brought about. On the other hand, if you want to know what is the probability for certain adverse effects occurring in the general population, you must not look to a small scale experimental study to answer that. The only way to do it is to look at a large population survey.

For example, we know that there is a great deal of evidence, based on long years of clinical observation, to relate cirrhosis of the liver to the use of alcohol; but if you took 10 heavy alcohol users and gave them alcohol in large amounts daily for a year, I would be willing to bet that you would not find one single cirrhotic among them at the end of that year; or if you took 10 people and had them smoke two packs a day for a year you would not find one single case of lung cancer among them. Such information is obtained only by looking at large population surveys, or by taking, retrospectively, groups of people who appear with cirrhosis of the liver, or with lung cancer, and finding what is different about them than about similar people who do not have those diseases. That is what gives you your clues as to what factors may be involved in the causation. Therefore the clinical studies on brain injury in cannabis users, based on people who come to psychiatrists and neurologists with evidence of brain damage, are perfectly legitimate examples of clinical observation. They do not prove anything, but they raise the possibility, and then, by observation over years, if you get enough such cases, and you gather statistics on the frequency with which they occur in a population, then you can have a conclusion which is every bit as sound as any other kind of clinical knowledge.

That is the kind of information in fact, on which most of our medical knowledge is based.

Other costs of cannabis use, apart from health damage, include social hazards of various kinds which are related to cannabis intoxication. There is now a great deal of evidence that driving ability and other skills related to driving ability are impaired by cannabis at the doses which social users employ, in much the same way that skills are impaired by alcohol. The risk of automobile or industrial accidents, therefore, under the influence of cannabis, can be expected to increase as the extent of total cannabis use by the population increases. I would add, marginally, a point which is not in the brief here. A recent study by one of my colleagues at the Addiction Research Foundation, Dr. Smart, indicates that many more cannabis users are now driving while under the influence of cannabis than was the case a few years back. McGlothlin and West in 1968 found that very few cannabis users would drive while high on cannabis because they were afraid that the risks of being busted, if caught while intoxicated, were so great that they would not take a chance. Now, however, the findings are that approximately 50 per cent of regular users at one time or another have driven while under the influence of cannabis; so I venture to say that the situation will not be very different from that relating to driving under the influence of alcohol, if use becomes widely accepted, and penalties are not as marked a deterrent as they formerly were.

The same prediction would hold with respect to work productivity or other social functions, which can be affected by cannabis in the same way that they can be affected by alcohol and other drugs.

I would like to turn now to the benefits and costs of legal controls. The assumption is made by the health authorities in relation to drug control measures that such measures are of value because they deter the population from using the drugs in amounts which may produce individual or social harm. One reason advanced for removing such controls is that they have failed to accomplish their purpose. I would like to emphasize that the evidence on this point is very far indeed from being conclusive. It depends on what you mean by "failing to accomplish their purpose." It is commonly stated, for example, that prohibition failed to deter alcohol consumption in the United States. Yet all the available evidence indicates that alcohol consumption was markedly decreased during prohibition. Of course people did drink, but they drank a great deal less, and the death rate from alcohol-related disease fell sharply during that period. This does not mean that prohibition was a socially desirable policy but it does indicate that prohibition had a significant effect on the level of use.

The same thing is said about the cannabis legislation, that it has failed to stop the use of cannabis. But surely the consideration is that if it has increased in the face of legal penalties, by how much would it have increased in the absence of such legal penalties? Quite frankly we do not know.

Our colleague, Patricia Erickson, is currently studying a group of young people who were convicted for the first time during 1974 in Toronto for the simple possession of marihuana. A large majority of the regular users said that they were "likely" or "very likely" to continue the use of cannabis. This fits the findings in the study to which I referred a few minutes ago at the University of California in Los Angeles, which also indicated that those students who had been arrested in the course of the two years

before the study on drug-related charges and prosecuted indicated that they intended to continue use. So there is pretty good evidence that regular, even convicted users, are not deterred by legal penalties. On the other hand, 70 per cent of occasional or experimental users—that is those using it once a month or less—stated that they were “not very likely” or “not likely at all” to use the drug during the next year. This is consistent with the findings in at least two other surveys which have shown that a substantial proportion of non-users give as their reason for not using it the existence of legal penalties and their desire not to become involved with the law. Now Erickson found, incidentally, that the time lag between the first use of cannabis and the time of the first prosecution among those whom she studied was five years, which means that problems of enforcement seem to preclude the application of legal sanctions at an early stage of exposure to cannabis when such prosecution is most likely to have a deterrent effect. Nevertheless, as in the case of alcohol prohibition, even though legal sanctions have not totally prevented the use of cannabis, and even though they are not as effective as they might be under other possibilities of application, there is still some evidence that threat of prosecution does deter potential users.

How does this relate to the findings about which you have heard from the survey in Oregon? You heard that the survey conducted there, one year after the removal of state sanctions against possession of small amounts of marihuana, indicated that only 6 per cent of current users—and that is one year after the removal of legal sanctions—or about .5 per cent of the adult population had begun to use marihuana after the law had been changed. I would suggest that this conclusion should be taken with a number of reservations. First of all there was no comparative survey done before the law was changed, and therefore one is talking only about retrospective recollection of the users as to their views and attitudes before the law was changed. There is abundant evidence from political science and sociology surveys and techniques that retrospective studies based on people's recall of their attitudes and practices a year earlier are less reliable than comparative surveys actually done a year ago and repeated now.

The second point is that the population of Oregon in general, even now, appears to use much less marihuana than the population of California or New York in the United States or Ontario or British Columbia in Canada. This suggests that the level of social approval of its use is low, and here I am speaking of the general population, and that the full effect of the recent change in the law may not be evident until such social attitudes gradually change. The Oregon legislative study as distinct from the Council on Drug Abuse study suggests that in fact public attitudes are beginning to loosen up. Therefore we would predict that there would be a time lag of perhaps a couple of years before we will be able to tell what the effects of that change in the law will be on the levels of use.

A third reason for caution is that Oregon is so far the only state to have made such a change. The fact that other states and the United States federal government have not yet made such a change and that there has been an increasing series of reports about health hazards may have contributed to a certain maintenance of a level of caution about the use of the drug, which may be expected to change if other governments follow suit and the feeling that somehow this is a socially disapproved act is gradually modified.

Nevertheless, I think we have to say that the retention of civil penalties for possession and the continued illegality of sale or cultivation can permit legal controls to exert a significant deterrent effect. It is not necessary to have criminal sanctions to produce an effective deterrent. An illustration of this is the lowering of the legal drinking age from 21 to 18 years in most of the provinces of Canada. It was widely recognized before the change was made that many 18 to 21-year olds had been using alcohol illegally and fairly frequently. Nevertheless, full legalization of this practice, which was supposed to be just a codification of the status quo, actually led to an almost immediate large jump in the consumption of alcohol by this group, and the doubling or tripling in one year of alcohol-related problems such as impaired or drunk driving in this age group. This demonstrates both that the legal restrictions had in fact a deterrent effect, even though they did not involve criminal charges, and that outright legalization did lead to a large increase in what was already widely practiced behaviour. This is a kind of negative evidence, after the fact, to show that the sanctions had in fact been having an effect while they were in force. In comparison with that change in the legal status of alcohol, Bill S-19 represents a much smaller change from current practice under the existing law and therefore should not have nearly so great an effect on the amount of use.

Finally, coming to the cost of legal controls, one obvious cost is the monetary cost. It is fairly easy, I suppose, to calculate the actual monetary cost of the man-hours spent by police, courts, forensic analysts, legislators, prison or jail personnel, and many others, in the prosecution, conviction and punishment of offenders under the present cannabis laws. Nevertheless it would be wrong to think that this would be reduced in direct proportion to the lightening of criminal sanctions. Experience with other types of offences suggests that courts are, in fact, more ready rather than less ready to convict and to apply penalties if these are light than if they are felt to be unfairly harsh. Therefore a reduction in penalties need not necessarily mean a decrease and could possibly mean a substantial increase in the total number of prosecutions and therefore in enforcement costs. This seems to be borne out both by the experience in Oregon and also by the experience in Canada in which the practical abandonment of jail sentences for simple possession has almost totally occurred while there has been a very large jump in the total number of prosecutions under lighter penalties.

However, another cost, of a very different nature from the monetary one, relates to the proper role of the law whether criminal or civil, in controlling individual behaviour. I am speaking here now of individual behaviour that does not visibly inflict harm on somebody else. There are many people who feel that the restriction on personal freedom to obtain pleasure by the use of cannabis, alcohol or any other drug is not a proper function of criminal law and is inconsistent with the practices and values of a democratic society, no matter how justifiable the goal of health protection may be. Obviously this is a question of ideology, and is not one to which one can readily attach a quantitative value. That is a personal belief which some people hold and others do not, and there is no way that I can see of attaching a comparative value to it to weigh against other costs.

Perhaps in the view of many citizens a more important cost is the harm which is said to be inflicted by the law upon those who are convicted of offences under the exist-

ing laws. The Canadian Medical Association brief, for example, states:

The social and health problems resulting from a criminal record far outweigh the crime of simple possession of cannabis for personal use.

This is a feeling which is shared by a great many people and many organizations, yet in a purely scientific sense we have to note that there is extraordinarily little evidence either to prove or disprove this statement. There is considerable evidence that prison sentences may produce serious emotional and social damage, but we know that most sentences for cannabis offences now do not involve imprisonment. We know of no comparable evidence concerning the harm resulting from a conviction record without incarceration. In fact, this is one of the major areas in which strong statements are made without any evidence at all. It is one of the sources of regret, for example, that the Le Dain Commission Report, which is so well documented in almost all other areas, contains no evidence whatever on the actual impact of the law on the subsequent lives of the people who are convicted under cannabis related offences.

On the study from California which I referred to before, I might quote one statement in it. This, I might mention, is in the context of an article which generally does not find, in the view of the authors, serious psychosocial disturbance. They found that arrests were reported by 0.7 per cent of non-users, 2.5 per cent of occasional users, 7.6 per cent of frequent users and 9.7 per cent of regular users, most of the convictions of course being related to drug offences. And they state:

The deleterious effect of arrests on emotional state that had been proposed as a good reason for legalizing marihuana use was not observed in our sample.

This also tends to coincide with the experience of Miss Erickson in her study of convicted users in Toronto. This is an area which urgently requires research, because if one is to obtain a clear assessment of the costs and of the benefits of the law, it is important to have factual information rather than merely personal convictions or beliefs.

Another cost of the present law in cannabis is said to be that it breeds contempt for the law in general. Again, the evidence on this point is very far from adequate and we know of no sound evidence which would back that statement, even amongst those who do, by virtue of their experience with the law, begin to acquire some measure of contempt or of disrespect for the particular law on cannabis. There appears to be no generalization that can be determined with respect to attitudes towards the law in general.

From all of the foregoing analysis, which has perhaps taken somewhat longer than it should have, it is obvious that the cost-benefit analysis, to which we referred at the beginning of this brief, consists largely of judging the relative magnitudes and the values, the importance, of a number of poorly measured or immeasurable quantities.

There is, first of all, the balance of the costs versus the benefits of the cannabis use itself. And you must remember that the benefit of use is real or people would not use the drug. Nobody uses a drug from which he does not get some perceived benefit, whether it is as cannabis or alcohol or whatever. The user must get something from it in order to have a reason for continuing to use it.

The problem is that this benefit tends to be largely ignored in the calculation of costs versus benefits, because it is a question mainly of individual pleasure, and this is

usually not given much weight in most people's stated systems of values.

Perhaps this is because there are many other ways of obtaining pleasure—including, one might note, alcohol—which are not in conflict with our traditional values or with the law. Moreover, it is hard to measure the pleasure derived from cannabis use, whereas it is much easier, in contrast, to measure at least in monetary terms and in frequency terms, the cost of medical and welfare services required by a case of a drug related health injury. On the other hand, in estimating the cost, there is the problem that we cannot yet estimate with accuracy the number of health cases that might arise at any given level of drug use. Our only guide is the experience with alcohol. We know, for example, that if the combined effects of price, availability and public approval became such as to increase alcohol consumption from the present average Canadian per capita consumption to the present average per capita consumption in France, we would find as a result in Canada only perhaps a 10 to 15 per cent increase in the number of Canadians using alcohol, yet at the same time a 100 per cent increase in the average per capita level of use, and over a 200 per cent increase in the frequency of health related problems caused by heavy use of alcohol.

In other words, as the total level of use of alcohol—and, we would predict, of cannabis—in the population goes up, there is a disproportionately large increase in the incidence of health and social problems related to heavy use, even though there is only a relatively small increase in the total number of users. Most of the increase comes about by larger use per person. On the other hand, there is also the balance between the benefits of the law in the form of whatever degree of deterrence the law may exert on high levels of consumption and, in contrast, the costs of the law especially as we noted in terms of hardship inflicted upon those who are punished by it. As I have already said, there is very little evidence on either of these two points.

The problem facing the Senate and the Parliament of Canada in general, therefore, is difficult, but it is even more difficult because the cost-benefit balance involves a fusion of the two things that I have talked about.

For any proposed policy change, whether it is the present Bill S-19 or the modifications of it proposed by the Canadian Medical Association, the Quebec Bar Association, the Canadian Criminology and Corrections Association or others, the question that really has to be answered is the following:

If present controls, legal controls, are made more lenient, will the reduction in the degree of hardship and other costs inflicted by the law be worth whatever potential future increase there may be in damage resulting from heavier drug use than now occurs?

To put this in perspective I will again emphasize that this is true of alcohol and of any other drug, and not only of cannabis. It is important to emphasize that there should be that balance. A few years ago, all of the publicity was being generated by people who were talking almost exclusively of the harmlessness of cannabis and of the harm inflicted by the law. There was a massive outpouring of views in that sense, that cannabis was harmless and that the law, in contrast, was much more socially harmful.

Today there is a tendency, at least in some quarters, for the pendulum to be swinging back. There are a lot of very harsh statements made about the damage produced by cannabis, without the qualifications of quantity, circum-

stances, length of use, that I have emphasized in this brief. I must state again that for any drug such questions are inseparable from the matter of amounts, frequency, circumstances, identities and characteristics of the users.

We know of no evidence, really, that cannabis is inherently more dangerous than alcohol if used in equivalent amounts by the same numbers of people for the same length of time and under the same social circumstances. Neither do we wish to argue that there is inherently any greater justice in restricting the use of cannabis than in restricting the use of alcohol. But there is ample evidence that combined use of both means greater total drug use and greater likelihood of heavy damaging use. And this is the problem really that legislators have to deal with. In other words, when one legislates a change in the law on cannabis, one is not only legislating a change in the law on cannabis but a possible change in the total amount of drug use, including alcohol, cannabis and other drugs as well.

To some extent this debate is occurring because of an historical accident. If cannabis had not been a natural drug, if it had been a synthetic chemical like LSD and others, which had not been present at the time that the narcotic control legislation was passed in 1921 and 1923, it would not have been included under the narcotic control laws but would have been under the Food and Drug Act as the synthetic substances which came along later are, and, therefore, all of this debate might not be occurring. The fact is, however, that it was included, and therefore the present debate has to take account of the context of the existing laws, attitudes, fears, and beliefs as well as factual evidence.

This would be true, I emphasize, no matter how long the Parliament of Canada were to defer a decision on this subject, because you cannot defer it in the expectation that at a later state all of the relevant information will be available. There will never be a time when all of the relevant information will be available, because the gathering of information on a scientific basis is an endless process. It goes on forever. Therefore, parliaments, like individuals, find themselves from time to time in the position of having to make decisions under a given set of circumstances in the light of existing realities, even though they may have less information available than they might like to have.

The process is, therefore, largely an intuitive one in which these rather ill-defined consequences, both of drug use and of the legal restrictions, have to be evaluated in the light of such information as we now have and in the light of the existing personal values and attitudes in the whole country.

In order to help summarize what the possible consequences of the different policy options might be in a very crude manner, we have appended to the back of this brief a table which ranks in relative order for each of the different policy alternatives the probable magnitude in terms of our best guess—and it is a guess, we would emphasize that—as to the different kinds of consequences which might occur. From a review of that table, and the notes attached to it which explain the basis on which the various estimates are formed, it becomes apparent that every proposed policy option has some advantages and some disadvantages, and that the decision is essentially one of relative values.

For example, if you look down the column under "Legal Sale by the Government," you find that there are many advantages in terms of decreased problems of law enforce-

ment, decreased problems with conflict between the values of youth and those of the older segments of society; a somewhat cynical value in terms of revenue to the government. On the other hand, there are costs in terms of probably the highest order of increase of health related problems; problems related to driving and other accidents under the effect of cannabis; problems of international relations with other countries which do not want to legalize cannabis, and so on. At the other end of the spectrum a very strict application of existing laws would probably have the advantage of the lowest rate of increase in the use of cannabis and of the problems arising from cannabis use, but the highest costs in terms of conflicts of public opinion and the highest cost in terms of the consequences of imprisonment upon the people convicted of such offences.

The briefs which have been submitted to you by the Bar Association of Quebec, the Ministry of Justice of Quebec, the group of Toronto defense lawyers and others, have criticized Bill S-19 on a number of points which we shall not repeat here. We might just add one thought which occurs to us as amateurs. We are not experts in the law, but it struck us that perhaps there might be some question about the apparent fairness of retaining imprisonment in the event of nonpayment of fines, since it might have a harsher effect on the poor than on the wealthy, unless fines were somehow made proportional to the income of the individual affected.

However, these are essentially points of internal logic or consistency of the law or its practical application, and we do not feel competent to comment further on them. Rather, what we would like to close with is a suggestion on the strategy of making this very difficult decision to which I have referred. Since you are dealing with value judgments which are based on attitudes and traditions which change with time, it is likely that no decision made now on Bill S-19 or on any other policy on cannabis will last forever. The chances are that sometime in the future there will be a call on parliament to reconsider the law again. It is also apparent that there is now no single or even one major consensus of opinion within the population. The discrepancy of recommendations within the report of the Le Dain Commission, just as within the recommendations which have been made before this committee, shows that there is a strong polarization. Therefore, we would very strongly urge you to consider an alternative which might reduce the degree of that polarization by offering a chance to find out something about what the law does.

If a majority of parliament favours some change in the existing law, whether it be Bill S-19 or some modification, this might achieve a greater degree of acceptance if the proposed change were enacted for a trial period of 5 or 10 years and if such legislation included provision for a mandatory, thorough evaluation of the effects of the change in law during the period in which it is being tried.

This would require a detailed survey of the effects of cannabis use before and during that period, and also—and I would stress this—of the effects of the application of the law before and during the trial period.

This would mean that at the end of the trial period, when definitive decisions were required, such decisions would be based not merely on a restatement of the original ideologies, fears or conjectures—the arguments that are taking place now—but on the basis of a new and larger body of evidence which would permit you to assign much more real magnitudes to the different things that you are trying to evaluate.

I would finally emphasize that the cost of doing such research would be extremely trivial in comparison with the monetary costs alone of the present legal and judicial activities related to cannabis prosecutions, and even to deliberations of government bodies and commissions about the law.

Adoption of such a policy of legislative experimentation would not only provide a sounder basis for future decisions, but might even become a precedent for the management of many other social problems which arouse equally strong and bitterly divided feelings.

Thank you, Mr. Chairman.

The Chairman: Thank you, Dr. Kalant.

Senator Prowse: Mr. Chairman, I move that the tables and notes at the end of the report be attached as an appendix to today's proceedings.

(For text of tables and notes, see Appendix)

Senator Croll: Dr. Kalant, in the course of your discussion you indicated that qualified scientific people, and other people who are not so qualified, have investigated this problem and have disagreed widely. On the other hand, I have heard an authority who says that every citizen has an obligation to form value judgments for himself. What have you to say about that?

Dr. Kalant: Mr. Chairman, I recognize the statement to which Senator Croll refers. I concur with it wholeheartedly, for obvious reasons.

Senator Croll: Never mind whether you concur with it. Explain it. You might inform them of its source. Explain it, please, doctor.

I have one more point. Around this table you will find any number of lawyers, possibly half a dozen, and other politicians trained to value, balance and make decisions. How do you relate that to the layman? How can he do that?

Dr. Kalant: Our feeling is that the layman is not in a position to interpret scientific evidence without the explanatory interpretation by those who are scientifically competent to do it. However, when the public is given that interpretation in terms of what the scientific evidence permits one to conclude concerning probable effects of any different influence, whether it be drugs, environmental pollution, nuclear radiation, or what have you, once the possible consequences of those factors and of the legal policies relating to them are explained, the value judgments are made by the general public on exactly the same basis as by the scientists. When scientists make value judgments they are acting as individual human beings. For example, when the scientists conclude that it is scientifically true that a certain drug in a certain concentration will cause such and such an effect, he is making a scientific judgment. However, when he says that is a bad thing, and that it is more important than any benefit anyone might obtain from using the drug, he is not making a scientific judgment, but a value judgment which every other citizen is equally capable of making. Our view is that the experts, as experts, should confine their testimony to those matters in which they are expert. However, when Parliament makes a value judgment for the population it obviously has to take into account what it perceives the value judgments of the whole population to be. The fact that members of the same commission, the Le Dain Commission, and Members of Parliament, presented with the

same evidence, have made very different value judgments emphasizes how important the subjective values are and why it is essential for scientists who are experts to separate their areas of expertise from the areas in which they behave as other citizens offering personal value judgments.

Senator Croll: Then those boys and girls in Yorkville who are making judgments on themselves, you say, have as much right to make them as anyone else, and they may be right?

Dr. Kalant: Yes, I would agree with that, provided that they have, in fact, made available to them the information and provided they are of sufficient age and maturity. We have laws which state the age of majority and we have concepts that apply to social practices in general. We have a voting age, based on the assumption that children are not capable of making reasonable judgments below a certain level of experience. Once they attain that level, yes, they are as entitled to make those value judgments as are others.

Senator Croll: What makes you think that we have all the facts and can reach reasonable, coherent and good judgments in this matter?

Dr. Kalant: I would assume, sir, that this is why you call experts to provide information.

Senator Croll: So we take the dozen experts—and you have seen some of the evidence presented here—and then we weigh it, and do you say whatever conclusion we arrive at must be at least the immediate answer?

Dr. Kalant: Yes, I would say that in fact that is true and that is what parliament does, in fact, on every issue on which expert testimony is adduced, for the simple reason that on no issue is expert testimony ever complete. Such value judgments are always made on the basis of the best information available.

Senator Croll: The bill is a result of expert evidence, or whatever knowledge is possessed collectively, is it not? You have no quarrel with the bill?

Dr. Kalant: I have no quarrel with your decisions, provided they are made in the light of factual evidence, or scientific probabilities which are brought before you.

Senator Croll: But you told us not to listen to these scientists, if I understood you.

Dr. Kalant: No, I did not. I said that where discrepancies exist in the information, I have attempted to interpret the grounds on which those discrepancies arise. The best one can do is explain that to you, then you must, in fact, exercise your good judgment as to what you do with it.

Senator Godfrey: I am interested in your proposal that a trial period be set, you say for five or ten years. Could you explain which one you favour? Five years seems to be rather short when you say we might go on for years and years.

Dr. Kalant: There is a certain bias on the part of any researcher, which you must discount. Naturally, researchers always like doing more research and if you were to ask me my personal view I would say I would favour a ten-year period. On the other hand, in other countries in which changes have been made in legal controls which markedly affect the level of drug use, usually the trends in change

have become apparent within a five-year period. Therefore, I would say that five years, though it would not be so much to my personal liking as would a ten-year period, would be a reasonable period.

I could cite, for example, Finland, which adopted a legal change based on differential taxation on beer versus distilled spirits on the strength of the argument that beer is less likely to be an intoxicating drink than distilled spirits and therefore its consumption should be favoured rather than distilled spirits. A three-year period was sufficient to show that in consequence of that change there was a large increase in the consumption of beer, with no change in the consumption of spirits and, consequently, a large increase in the total consumption of alcohol.

I would suggest that a five-year period would probably be sufficient to give information on the changes or the trends in change on levels of consumption. Whether it would be sufficient to give as valid an estimate of the consequences for health-related costs, I am somewhat less sure, because some of the more important complications probably do require a fairly lengthy period of exposure.

The Chairman: We have been trying five-year periods for capital punishment.

Dr. Kalant: May I make a comment on that, Mr. Chairman?

The Chairman: Yes.

Dr. Kalant: I simply wish to say, apropos of that, that we thought of that example and had some reservations about making this suggestion, because of the fact that the capital punishment matter did not appear to result in any great resolution of differences of opinion. Our point, however, is that the capital punishment trial period was not in fact accompanied by any mandatory survey of changes in the effects of the law and its application. Our argument is that a trial period should be linked to a mandatory survey of both the medical and legal consequences.

Senator Sullivan: Mr. Chairman, the Senate committee had a series of questions prepared for it by the research branch of the Library of Parliament. I wish only to refer briefly to three areas of that: On page 1 "Immune Response", the work of Dr. Nahas, at Columbia University. Also listed, in contrast, Silverstein and Lessin at the University of California. At page 2 is reference to Dr. Tennant's work on the lung in the United States Army. On page 4 the work is "The Amotivational Syndrome" papers by Kolansky and Moore. I find, in reading that, that if one will refer to a magazine entitled *Consumer Reports* of March 1975, most of that material has been obtained from this article, "Marijuana: The Health Questions", by Edward M. Brecher and the editors of *Consumer Reports*. Would you be good enough to comment on that, please?

Dr. Kalant: Mr. Chairman, I would not wish to comment on the questions prepared for your use. I certainly would be prepared to comment on the article by Mr. Brecher, because I have seen it and I consider it an example of most unfortunate distortion of scientific evidence by someone who is not competent to assess scientific evidence.

Mr. Brecher is a journalist, he is not a scientist, by training. This is not meant to cast any aspersion on journalists, but I think it is meant to point out that someone who attempts to evaluate scientific evidence should know what scientific evidence consists of and the criteria by which one judges it.

The article referred to in the Consumers Union report is, in our view, a grossly distorted article, because it ignores a considerable body of evidence and, in fact, misinterprets or misstates the conclusions of some of the people whose articles are cited in it.

As I recall the article by Brecher, it draws a conclusion on one of the studies by a group from Pennsylvania, by Dr. Igor Grant and colleagues, which appeared in 1973. The conclusion which Mr. Brecher draws from his review of this paper is that the authors were saying that a long-term use of cannabis had not had any demonstrable neurological or psychiatric effects on the performance of the users compared to non-users in a group of university students.

The conclusions stated by the authors themselves are quite different. The authors say:

We hope that this report is just the first of a series designed to investigate the dosage and population parameters of marihuana useage. For it tells us only about moderate drug use and only in a population which is highly selected for intelligence and emotional stability. Adequate understanding of the effects of marihuana requires similar studies of different groups with different levels of drug use.

This first contribution gives grounds for cautious optimism as to a lack of ill effects of long-term moderate use among emotionally stable young men. The finding of poorer performance by marihuana smokers on the localization subtest of the Tactual Performance Test—

This is one of a battery of tests used for studying brain damage:

—requires comment. The absence of confirmatory findings in the other tests has led us to conclude that this one finding did not indicate a neuropsychological deficit among marihuana smokers. It should be borne in mind by future investigators, however, and this test should be included in any assessment of marihuana smokers.

I would add further the very commendable caution of the authors in drawing that conclusion, which is completely correct. They say at one point:

In the final analysis, however, our failure to demonstrate impairment does not mean that no impairment exists but only that our tests could not demonstrate it.

I looked back over their results and consulted with our statistician in the Department of Pharmacology, and I find that they used an unjustifiably cautious statistical evaluation. Had they used the statistical evaluation appropriate to the hypothesis which they were making, they would have found that two additional tests also showed significant impairment in the chronic cannabis users compared to the non-users. I think this underscores the legitimacy of their conclusion, that only some cautious optimism about light or moderate use is justified by the study. Mr. Brecher does not draw such a conclusion. I would emphasize the fact that when radio programs such as "As It Happens", or newspaper accounts, or others wish to refer to the evidence on cannabis use, they should not use assessments made by people who are not trained to assess scientific evidence.

Senator Prowse: Mr. Chairman, my first question is: Dr. Carleton Turner, from Mississippi, indicated to us that a probable explanation for the difference in findings was that it is so difficult—in fact, practically impossible—to get two batches of the plant that are the same, so that

probably each person is using different strengths without realizing it. He seemed to be of the opinion that while they have isolated Delta-9 THC as the active ingredient, there was some reason to believe there may be some other active ingredients in the marihuana itself which do have some effect but which would not show up when they were using the synthetic THC. Have you any information on that? Is that in agreement with your findings?

Dr. Kalant: Yes, that is true. The uniformity of content of THC is not absolute from one batch of marihuana or hashish to another. Depending on the source, there can be wide variations. To some extent, one might say that the use of cannabis, like the use of alcohol, might be independent of the strength, in that the user might use enough to get a certain desired degree of effect, just as you can get the same desired degree of effect of alcohol, whether you use wine or whiskey. You drink more or less according to the amount needed to produce a certain effect.

However, experiments by Dr. Cappell and Dr. Pliner indicate that this does not actually hold rigorously with cannabis, that the user cannot in fact titrate his amount of use so sharply, and that there is a certain tendency to over shoot or under shoot the desired mark, depending on whether the preparation is stronger or weaker. So that it is probably true that from time to time the user may use more or less than might be intended because of variations in the amount.

With respect to the second part of your question, yes, there is also some experimental evidence that the other cannabinoids, the other materials related to THC, which are not terribly active pharmacologically in themselves, may change or increase the activity of the THC. So that, again, to some extent the variations in composition of the cannabis may have some effect on the degree of drug action produced by a given batch.

However, I would conjecture that over time this would tend to average out; that if we are talking in terms of a single occasion, yes, that is an important factor, but if we are talking about long-term practice, it probably averages out in that a light user will tend to be, on the whole, a light user, despite some variations in degree, while a heavy user will be a heavy user.

Senator Prowse: My second question has to do with this lowering of the age to 18 in the use of alcohol. I have a sense of guilt, because I was one who very seriously led, in a certain area, the move to lower the age to 18, with the idea that they were drinking anyway, and we would give them a sense of responsibility, of acting like adults. Apparently the result has been that more are now drinking than were drinking before; and, worse than that, the effects we were trying to avoid have been shoved down to the 17s, 16s, and even lower. Equating that to what we are doing here, to lighten the penalties, are we running the same danger if we lighten the penalties? We shall undoubtedly have an increase in use. Do you think there is a danger that the damage done by the increase in use might offset the benefits that would accrue from the lessening of the bad effects of legal sanctions?

Dr. Kalant: That question is the heart of the question which I have been raising. There really is a sliding scale. In other words, the smaller the change in the legal status, the smaller we predict would be the increase in use. On the other hand, the more would be the costs of law enforcement—I use the word “costs” not in a monetary sense, but in a global sense—the more would be the social and other

costs of law enforcement which you would be retaining. Where do you balance off? How much increase in use are you willing to accept in return for diminishing the costs of the application of the law? Obviously, I cannot answer that in my capacity as an expert witness; I can only answer that as a citizen.

Senator Prowse: I thought perhaps you might be able to answer that in your capacity with the drug commission.

Dr. Kalant: All I would say on that, senator, is that if civil penalties are retained with sufficient teeth in them—that is, if they are sufficiently heavy and enforced with such uniformity that the user feels there is a fairly high probability of being caught and punished—it would likely retain a considerable deterrent effect even without the need for a criminal record. On the other hand, if civil penalties are very light, as they are in Oregon, and word gradually gets around after a trial period that it is really no worse than a traffic ticket, then I would predict that the increase in use would be substantially greater.

Senator Neiman: That is an area, Dr. Kalant, with which we are all very much concerned. In your brief, and also in your book, which I have read with great interest, you seem to recommend a civil penalty rather than a criminal penalty for possession. This is the problem with which we are directly concerned. Even with the proposed change in the law setting the penalty at a fine, there is the possibility of a jail term for non-payment of the fine and, of course, there will also be a criminal record.

It seems to me that your feeling—and I do not want to interpret it for you—is perhaps that we do not need to go so far as to have a criminal prohibition for simple possession in order to get the desired level of deterrence to society as far as this drug is concerned.

Dr. Kalant: Again, I would have to say that if you are directing that question to me in my capacity as an expert in this area of drug research, that is not a question that lies within my expertise.

Senator Neiman: I realize that.

Dr. Kalant: I can only answer that question in my capacity as a citizen. If you are asking whether there is evidence that a civil penalty without a criminal record can exercise a significant deterrent effect, I would say that there is such evidence, provided that the civil penalties have bite to them. One advantage of using a trial period and a series of graded changes in the law might well be that while allowing a penalty under the criminal law without going to decriminalization, one could find evidence as to whether or not there had been any appreciable change, any significant increase in use, that would outweigh a further step at the end of the trial period. One might even proceed to a new trial period by removing criminal sanctions and retaining civil sanctions. One could go a step at a time in light of the experience.

The trend, I suppose, in respect of changes in the law, is that such changes are seldom reversed. Therefore, there is perhaps some merit in arguing for a gradual step-by-step change rather than for an all-at-once change, which provokes a great deal of argument, both in Parliament and amongst the general public.

Senator Langlois: Dr. Kalant, your suggestion as to a trial period strikes a responsive chord in me. I should like to see added to that suggestion something to the effect that during such a trial period there should be a nation-wide

intensive educational program with two objectives in mind, the first being to inform the public of the results of such a survey, and the second being to caution the public against the proven ill effects of cannabis use as established by such a survey. Would you care to comment on that?

Dr. Kalant: Personally, I would be in sympathy with such a suggestion. There is a problem as to what in fact constitutes an educational program. The experts in the field of drug education programs are currently undergoing a great deal of agonizing reappraisal, as the cliché has it, because they are not sure what, in fact, is education, they are not really sure whether the things which have been done in the name of education have really educated. Personally, I should like to see education include not only information about drugs but also the training of children at the earliest levels of school to make responsible value judgments, not only in respect of drugs, but the variety of problems which affect their relationships to society generally.

I have seen such experiments applied elsewhere and there is a great deal of enthusiasm for the effect which they have in maturing the ability of children to make responsible value judgments. I should like to see such a component in any educational program. Certainly, I would agree with any educational program which would equip our young people to make responsible judgments as citizens, particularly in their teen years when they often feel inclined to take decisions even though the law has not yet recognized their right to do so. I think it would be extremely helpful if they had some preparation for that period, both in the form of practical knowledge and training in the area of making responsible value judgments.

Senator McIlraith: Dr. Kalant, at the end of your brief you have a table entitled, "Probable Consequences of Different Social Policies on Cannabis." I am concerned with the one headed, "Bill S-19," which is the legislation before the committee. On page 3 under the subhead, "Political & International," with a further subheading of, "Internal conflict (differences between provinces, cultural groups, etc.)," you indicate that the consequences of Bill S-19 would be high. I should like to get further elaboration from you as to just how you came to the conclusion that the consequences of Bill S-19 would be high.

Dr. Kalant: That point is dealt with in comment (15) at the bottom of page 5 of the notes following the table, senator. That suggestion is based on the fact that there now is obvious wide disagreement amongst the authorities within and between various provinces, various professional groups and segments of the public with respect to the existing legislation under which cannabis is included under the Narcotic Control Act carrying criminal penalties.

The maintenance of cannabis under the criminal law—that is, having criminal sanctions against simple possession—would not radically change that issue of contention. Therefore, we postulate that the same degree, or a similar degree of conflict, is likely to continue about it, as witness the testimony your committee has already heard from different groups which have appeared before it. Different opinions have been reflected in the views of different professional bodies and amongst the general public. Those differences of opinion are not likely to be radically changed as a result of Bill S-19.

That, we would suggest, is true at the present time. We would conjecture that if the proposed type of educational

process takes place, linked with a mandatory study of the effects, that would, we hope, not be the case when a subsequent decision for either retention or modification of the legislation is made at the end of the five year period.

Senator McIlraith: Do I understand you to indicate that where you have the word "high" there you might well have said "will continue to be high"?

Dr. Kalant: Yes.

Senator McIlraith: It is a continuation of the present state?

Dr. Kalant: Essentially a continuation of the present state.

Senator Croll: Short answers please, doctor, because we are running short of time and you are full of information. Would you turn to page 16 of your brief? In this case it will be a citizen who has formed a value judgment.

Dr. Kalant: Yes.

Senator Croll: You say:

However, we have no factual information about the frequency or severity with which these restrictions actually affect the lives of individuals found guilty of cannabis offences.

Strike out the next sentences, because they are more recent. What you are talking about is a record really. Next time you draw up a brief, leave that out, will you, because 50 years of experience in law and politics tell me that there is nothing more devastating, debilitating and damning to a youngster starting out in life than to start out with any kind of record; it follows him through life.

Senator Godfrey, whose father was Securities Commissioner in Ontario for many years, when we were in government together, was telling me the other day that when the commissioners questioned people about matters that were important, whether or not they were telling the truth, oftentimes they would come across someone who had a record for a small nothing at maybe 18 or 19 years of age; he had completely forgotten about it, but he would come up and sign the affidavits. Then Senator Godfrey's father would get the record, take a look at it and say to him, "Well, you are not absolutely right," and he would reply, "I forgot all about it." He did forget about it. Try to get somebody into a bank today, try to get somebody into any of these places, and a record is the most damning thing. Sure, he has served the sentence and paid the fine, but he has a mark on him that stays with him throughout life. You can save those three or four pages in future, doctor.

Now let us get on. I wanted to ask you a question—

The Chairman: Dr. Kalant wants to make a comment on that.

Senator Croll: You want to make a statement about that?

Dr. Kalant: Yes.

Senator Croll: I thought you would take me as conclusive, but go ahead, doctor.

Senator Godfrey: He wants equal time too.

Senator Croll: All right, you've got equal time.

Dr. Kalant: I think your comment is one that is obviously shared by a great many people. It is a commonsense impression. It is one which personally I would agree with, but it is one which, as a scientist, I am compelled to say one cannot back up with factual evidence. In other words, you can say, "Yes, I know of cases." The question is, in evaluating the effects of the law you want to know in how many cases, in what ways did it have an effect? The regrettable thing is that such evidence has never in fact been gathered. While my sympathy is to agree with you, if I am required, in making an evaluation and a judgment of the evidence, to take your statement based on personal experience and impressions in dealing with the law and its application, then you should equally be prepared to take the view of anyone who offers a clinical impression. We do not accept the clinical impression without backing up evidence, and I do not think we should accept a legal impression either without some backing up evidence.

Senator Croll: You are in bad shape, let me assure you. Look around here. There are six lawyers here. We are all lawyers—every one of us.

Senator Sullivan: Oh no!

Senator Prowse: Just do the best you can.

The Chairman: You were including the chairman.

Senator Croll: Yes, the chairman. Every one of us has gone through the same experience that I speak of. What do you want? What kind of evidence do you want? We have all lived through it; we have all seen it.

Dr. Kalant: I can give you the type of evidence. No one disputes the occurrence; no one disputes the fact that it happens. The question is how often it happens, to how many people and with what consequences, because the law has costs, and we do not dispute that. Drug use also has costs.

Senator Croll: I came across this the other day:

Narcotics attach themselves to certain receptors of the brain. Some people are born with more opiate receptors than others.

That struck me as a layman. What do you think of it?

Dr. Kalant: That is a hypothesis, which is an interesting one; people are working on it but it is at present only a conjecture.

Senator Croll: They did some legalization in Britain and Sweden. The result was that people turned to other drugs; in Sweden to heroin, and in Britain to some other types of drugs. Have you any recollection of reading of that?

Dr. Kalant: I am sorry, I did not catch the first part of your statement. You say they legalized—?

Senator Croll: There was some legalizing effect in Sweden and in Britain.

Dr. Kalant: No, to my knowledge it remains illegal.

Senator Croll: They made some provision in Britain.

Senator Prowse: You could get the drugs free.

Dr. Kalant: You are referring to narcotics?

Senator Croll: Yes.

Dr. Kalant: Not cannabis. Heroin, yes; certain users are permitted to obtain the drug.

Senator Croll: And then they turn to other drugs.

Dr. Kalant: This is also true of methadone maintenance programs. A certain proportion of patients who have stopped using heroin and are treated on methadone maintenance programs then present problems with alcohol or a variety of other drugs, because though they no longer have the legal problems with heroin use, or the financial problems, they don't get the "kick," so they may remain on methadone in order to avoid the problems of the law and the personal costs of getting heroin, but a certain percentage of them do acquire problems with other drugs.

Senator Croll: Does the drug addict become a criminal, or was he a criminal before he became a drug addict?

Dr. Kalant: There are two answers to that, because both things can happen. A study was done some years ago at the United States Narcotics Addiction Hospitals at Lexington, Kentucky, and at Dallas, in which, during the period of a year, newly admitted heroin users were studied and their drug using and social histories were examined. It was found that most of those who came from the big cities in the northeast, such as New York, Boston and so on, or the big cities in the southwest, such as Los Angeles and other large cities, had first run into problems with the law on other counts; they had been members of street gangs, they had been involved in fights or robberies or other petty crimes for which they had been picked up. Many of them had also been using cannabis as part of the norms of behaviour of the group. They were sentenced to prison for those other offences. In prison they met narcotic users, who taught them to use heroin, so that they graduated from criminal convictions to narcotic use. In contrast, others especially now, since narcotic use has become considerable more frequent in recent years, go through the reverse process; they first become acquainted with narcotic use, they may become dependent on it, and then in order to pay for the amounts of drug they need they become involved in crimes committed in order to raise money. Both things can occur.

Senator Croll: What you are saying, in effect, is that today we have not got the answer; take it easy whichever way you are going.

Dr. Kalant: That is right.

Senator Godfrey: I think I should make some explanation of the comment made by Senator Croll. I think what I was trying to say in my conversation with him was that the consequences of a record are not just the record itself, but the fact that you lie about it later on can be more damaging than the fact that you have the record. Somebody who is taking an application for employment has to make up his mind whether the man is lying when he says he has not got a record or whether he has actually forgotten. If he was lying, then he would not give him employment, even though he would have given him the employment if he had told the truth. He was more concerned about the lying than he was about the record itself.

Senator Croll: The truth is, the fellow had not got the job, and there is no reason why.

The Chairman: A final comment by Dr. Kalant.

Dr. Kalant: This is really in relation to the last point, again. I would emphasize again that you should not misun-

derstand the point I am making. I have no wish whatever to minimize the potential harmful effects of a criminal record on any individual. All I am saying is that in making a social policy judgment you must weigh total costs against total benefits; and when I said there is no adequate documentation, that is what I was referring to. No quantitative study has been done of a survey tape to follow up a large group of people who have been convicted on drug possession charges, to see what actually happens to them, what percentage of them do run into trouble, or of what kinds of trouble with what consequences, and that is really what I am referring to.

The Chairman: Thank you very much, Dr. Kalant. I want to thank you on behalf of the committee for a very informative brief.

Senator Godfrey: Perhaps you should also thank Senator Sullivan for recommending him.

The Chairman: I thank Senator Sullivan, too, for suggesting the invitation. The committee now adjourns until 2 p.m.

The committee adjourned.

Upon resuming at 2 p.m.

The Chairman: Our first witness this afternoon is Professor Graham Parker, of Osgoode Hall Law School, York University, where Professor Parker teaches law. He is presenting a brief, which you have before you in summary form which, as he says, represents his views and the views of some of the teachers of criminal law at Osgoode Hall with Professor Parker.

Professor Graham Parker, Osgoode Hall Law School, York University, Toronto: Thank you, Mr. Chairman. It would be fair to add at this point that the very first sentence of my brief does say that this is a representation of the views of some three or four teachers of criminal law at Osgoode Hall. However, it is also fair to add that it does not purport to represent the views of anyone who worked on the Le Dain Commission.

I have set out here, as the chairman rightly said, a brief in point form, because I have attempted to concentrate on substantive legal issues or legal problems that I see in Bill S-19. It is also fair to say that the first three paragraphs of my presentation are really meant to be a rational, cynical lawyer's view of possible reforms. I almost feel ashamed coming here today after the scientific, empirical, clearly researched brief of Dr. Kalant. I make no apologies for the fact that I am only a cynical, pragmatic lawyer. It is also fair to add that these views expressed in the first three paragraphs would not necessarily be the views of the majority of my students. I have not carried out any empirical research among my students, but I have carried out some very unscientific surveys. It is fair to say that among the students at Osgoode Hall who are 23 years of age or so, middle class and middle brow and full of the work ethic, they feel very hesitant about the cannabis problem. It would certainly be true that far from a majority of them would be prepared to legalize cannabis *simpliciter*, so to speak. But, on the other hand, they are a little schizoid, because they feel that over-criminalization is an argument which cannot be denied. They feel that the law's intervention in matters of morals is undesirable and has had undesirable effects. So their response is more an ecological response than a punitive one, if I should put to them the first two or three paragraphs of this brief. The first two or three paragraphs, to repeat, are really meant to be a ration-

al and legally logical presentation of the problem. I shall now read them.

Whatever the apprehended or real dangers of cannabis, the most logical and far-sighted solution may be a licensing scheme. There is no need to elaborate upon this as it is exhaustively examined in Kaplan's book *Marijuana: The New Prohibition*, which I would recommend to the committee. Kaplan is very fair in putting forward the pros and all the cons of a licensing scheme.

Such a system would probably work as well as liquor licensing has done in controlling quality and distribution, in deterring illegal manufacturers and dealers and in providing funds for the inevitable harm done to those who abuse themselves, or others, through the use of the drug.

Presuming that, despite its rational approach, the suggestion in paragraph one is unacceptable, then we would adopt the recommendation of the Le Dain Commission that simple possession no longer be an offence. The reasons for this recommendation are found on pages 292-293 of the cannabis report of the Le Dain Commission and are quoted for your convenience in the proceedings of this committee, issue No. 5, page 21.

If the second plan were followed, then I would certainly endorse the arguments of the Le Dain Commission for legalization of simple possession. For a general criticism of Bill S-19—and I mean a general criticism—the proposed legislation in Bill S-19 seems to be illogical because it is trying to create a compromise between punishing a serious crime and, by making it a minor breach of a public welfare statute, almost overlooking behaviour which many legislators admittedly consider to be a social evil.

Some supporters of the bill, and clause 48 in particular, feel that it will have some deterrent or salutary effect on the populace; that the continued illegality of simple possession will provide both an aura of moral disapproval and, at the same time, will provide a further instance of the symbolic quality of the law.

Because I am a person who acts like a lawyer—in other words, because I can only predict from very raw social indicia—I cannot do anything else but give you a value judgment on that very last phrase, “the symbolic quality of the law.”

Many people tend to feel that the law does have a symbolic quality, and Dr. Kalant referred to that this morning, saying that those who say that legalization does not make much difference—“and here are the statistics”—do not take full account of the fact of those who do not smoke cannabis or use cannabis under the present state of the law. I cannot give you an answer to that one. That is a value judgment.

I go on in the same vein with a general criticism of Bill S-19, and say:

A counter-argument could be put forward that there are few instances in legal history of a milder punishment of a popular activity lessening its frequency. Instead the law will be seen as weaker and less capable of asserting its moral and social force. The approach of the United States body, which has recommended that the law should only take a penal interest in cannabis when it publicly manifests itself may be no less hypocritical but certainly more pragmatic.

I come now to slightly more specific criticisms of Bill S-19. The first criticism of Bill S-19 is a pseudo-sociological one.

The greatest danger of continuing an offence of simple possession is that charges will be laid discriminately. If the experience in Toronto in the last few years is any indication, the law will be invoked against the very visible, the uninformed and the underprivileged. If the simple possession offence is subject to police or prosecutorial discretion—which it inevitably must be, I suppose—which only results in the conviction of the long-haired youth, the member of a minority group or someone classed as a troublemaker, then the law is not a good one if it is not applied equally to the middle-class user of cannabis.

That is a very real criticism of this proposal, given the police and prosecutorial discretion that we have experienced in the last few years. I do not think anyone wants to see clause 48 of Bill S-19 used in some rural community as a way to get rid of troublemakers, long-hairs, hippies, or whatever, and I would be very sorry if the word went out that "We don't worry about middle-class cannabis users in Toronto, but if some long-hair comes into our town then we will get the local magistrate to unload on him." I think that would have a very unsatisfactory effect. That is one of the most troubling aspects about the discriminatory quality of clause 48.

That is the end of my social remarks, if you like, and I shall not make any further value judgments of a general sociological kind. The value judgments I make now will be within Dr. Kalant's framework as more or less of an expert's value judgment. Please remember that an expert in the law is simply a person with a good hunch or a good research assistant, and not with a bunch of IBM cards to give good empirical data as evidence.

I have listed these specific problems that we have with Bill S-19:

First, the reverse onus provisions in Bill S-19, and in particular in clauses 53 and 54, are not acceptable. They are in conflict with our Anglo-Canadian legal tradition which is best described by Lord Sankey, the Lord Chancellor, in his "golden thread" statement in *Woolmington v. D.P.P.* That, of course, is on the basis that a man is innocent until found guilty, and all those other clichés that lawyers delight in, about it being better that 99 guilty men go free than that one innocent man be convicted. Those of us with an interest in the criminal law are very worried about the fact that the onus of proof is on the accused in those clauses I mentioned. We think that is unacceptable, so long as we do preach the "golden thread" argument, as it is explained in *Woolmington v. D.P.P.* That is clearly the law in Canada under the Criminal Code, and we would hope it would continue with the offences outlined and suggested in Bill S-19.

We have real trouble with the difference between possession and trafficking. With all the following suggestions, you can assume that we are going to live with the idea of simple possession as an offence to stay in the law; but, nevertheless, it does not solve the problems we have.

The punishments provided in the bill are obviously supposed to reflect a clear distinction—in terms of public condemnation and penalty—between possession and trafficking. Consequently, this policy should be reflected in the wording of the appropriate clauses. Possession for the purposes of trafficking, clause 49(2), should be carefully defined to substantiate the social policy that this is a serious offence preparatory to trafficking itself. In other words, it looks as if it is meant to fulfil the same function as the "attempt" provisions in the Canadian Criminal Code. We would certainly go along with that, that posses-

sion for the purposes of trafficking must be looked at as a serious offence.

The offence in clause 49(2) should not be used to convict those who have merely possessed a large amount of the drug for their own use, and other than for the purposes of trafficking. This is a further reason for eliminating the reverse onus clause which tends to blur the distinction between possession and possession for the purposes of trafficking.

To further ensure a distinction between simple possession, clause 48, and possession for the purposes of trafficking, clause 49, there should be some quantity below which possession could not constitute an offence under clause 49, the clause which describes possession for the purposes of trafficking. We suggest that a suitable cut-off point might be one ounce of marihuana, but realize that there are quantitative and qualitative differences between various strengths and varieties of cannabis.

We think it would be a very bad thing if people could be charged with what is still a very serious offence under clause 49 for the possession of a very small amount of cannabis, particularly in the form of marihuana. The reference to the qualitative and quantitative difference is due to a reading of the evidence that you have before you. I think Dr. Morrison, for instance, told you that there could be a very strong cannabis in the form of marihuana and a relatively weak hashish. I realize there are problems in this respect but, given the seriousness of the offence under clause 49, I think it is necessary to set a lower limit for possession for the purposes of trafficking under clause 49.

The foregoing has assumed the definition of trafficking found in clause 47. This definition is too wide. The trafficking should apply solely to those who deal "at arm's length." The definition does not take into account transfers of the drug between joint possessors or cases where there is clearly no consideration—and we use "consideration" in its legal contractual sense. Perhaps this problem can be solved either by a redefinition of "traffic" under clause 47, or by a separate provision for gratuitous transfers and those among joint possessors. By "joint possessors" we are thinking of the fairly clear sociological fact that quite often friends will have a relatively large amount of cannabis which they share amongst themselves. We want to avoid the idea of that amount of cannabis resulting in a charge of possession for the purposes of trafficking.

The Supreme Court of Canada in *Beaver v. The Queen*, a case of possession of heroin, which is a much more serious offence, laid down that an accused could not be convicted of possession without clear proof of awareness of the prohibited nature of the substance. That case is still perfectly good law. There have been some refinements on the *Beaver* case. I think it is only fair to mention that the *Blondin* case, which is a decision of the British Columbia Court of Appeal, says that if the individual knows he is in possession of a prohibited drug but is mistaken as to the exact nature of the prohibited drug, then he can certainly be convicted of possession of the drug of which he actually has possession. We certainly would not quarrel with that case or the similar case of *Burgess*, which says the same thing.

The courts should not gain the impression, because the offences are merely provisions of the Food and Drugs Act, that strict liability—that is, conviction without *mens rea*—as explained by the Supreme Court of Canada in *Regina v. Pierce Fisheries Ltd.*, would apply. *Regina v. Pierce Fisheries Ltd.*, as you may remember, was a decision of only a few

years ago where the Supreme Court of Canada decided that although *Pierce Fisheries Ltd.* was not aware of the fact that they had some undersized lobsters—I think it was 22 undersized lobsters in a catch of some 70,000 pounds of lobster—they could nevertheless be convicted because *mens rea* did not apply. I do not think we want that to apply to the offences outlined in Bill S-19.

Moving from the technical question of criminal liability to the problem of punishment, we strongly recommend that there should be no minimum punishments anywhere in the bill. Probation should always be a possible alternative disposition. The minimum penalties prescribed in the bill would preclude probation because of section 663(1)(a) of the Criminal Code. We think that judicial discretion should be maintained, particularly in these days when the Canadian Law Reform Commission and many other reform-minded lawyers and criminologists are talking about diversion in the law so that we can keep as many people as possible outside prisons. That is one of the major reasons for minimum punishments, probation being a punitive measure, if you like, but also a measure which looks towards rehabilitation rather than retribution.

In addition, the punishments are too harsh. Can we really say that trafficking in cannabis is twice as "bad" as assault causing bodily harm, as set out in section 245(2) of the Criminal Code? Many other comparisons could be made. I invite members of the committee to flip through the Code to find those offences which would attract the maximums that are being suggested in Bill S-19, not to mention those which would attract maximums only half as great as some of those contained in Bill S-19.

There should be assurance in clause 48 that a person convicted of possession will not be sentenced to prison in default of payment of a fine merely because he lacks adequate means to pay the fine. This point was raised by Dr. Kalant this morning. There is provision in the Criminal Code where a means test, in effect, can be applied, particularly in respect of young offenders who fall below the age of 23 years, or something like that. However, the case law has not made it absolutely clear and perhaps we should clarify it.

There should be clarification of the criminal record situation, and I certainly endorse the remarks of Senator Croll this morning to the effect that the empirical evidence as to a criminal record hardly tells the story. We must clear this up. Clause 52 is unacceptable. Provision should be made for the automatic cancellation of any record after three years if the person convicted has not been convicted of any other offence.

The next item certainly drew a lot of support from my colleagues, that being that provision should be made that the RCMP, or any other law enforcers, cannot use the writ of assistance, particularly in relation to clause 48, as described in Bill S-19.

Finally, on examination of clauses 49 and 50, it was our feeling that the prosecutorial discretion in those clauses is too wide and does not take account of the amount of cannabis or the circumstances surrounding the seizure of the drug.

The Chairman: Thank you, Professor Parker. Senator McIlraith will lead off, followed by Senator Prowse.

Senator McIlraith: Professor, I have three questions I would like to ask you dealing with paragraph 4 on page 1 of your brief, where you say:

The greatest danger of continuing an offence of simple possession is that charges will be laid indiscriminately.

You then, in making the argument in support of that, go on to illustrate the case of a person who was making trouble in a community, and that community wanted to get rid of him, and you suggest it would be a bad thing if the law enforcement authorities charged him with the crime of possession of marihuana. What would flow from your argument is that you would want to grant a special privilege to users of marihuana, if we retain it as an offence. Why should such a person not be treated like any other person who has broken a law?

Professor Parker: I look at it in exactly the opposite way. I suggest that I do not want to give a special privilege to the police to lay a charge against this so-called troublemaker merely because he has possession of cannabis, when the police are not doing the same thing to a middle-class person. If this person is a troublemaker, then the police should be obliged to lay their charges based on his troublemaking, and not on the fact that he happens to smoke pot.

Senator McIlraith: Would you not agree that it is the duty of the police, if the man is making trouble in the community, to lay charges against him for every offence? Is that not their duty as policemen? And then, if I may follow on from that, where is the logic in saying that because you have a grievance against the police they should not perform their duty in these small communities? I think you used the example of a rural community.

Professor Parker: I am suggesting that they should always perform their duty, but I am suggesting they should not use this simple possession charge as a weapon which they do not use against middle-class people in that same community.

Senator McIlraith: But is that not another point? Is the point not that if an offence has been committed, it is their duty to lay the charge, and that you should take whatever remedy you want against the police for their failure to lay a charge against the middle-class person?

Professor Parker: I would go along with that so long as every step is taken to prosecute all middle-class possessors of cannabis who do the same as this so-called troublemaker. Unfortunately, that has not been done.

Senator McIlraith: Well, you assert it has not been done, and I assume you are correct; but because they are failing to act properly in that connection, why would you have them also fail to do their duty in the rural village when the troublemaker appears?

Professor Parker: I am all in favour of their doing their duty, but I hope that if a person is a troublemaker they will charge him with some troublemaking offences.

Senator McIlraith: Well, would you not properly charge them with all the offences they commit? Otherwise, surely there must be a special privilege created for one class of offence when you say that they will not be prosecuted, but that they should be free to violate the law.

Professor Parker: I am not in favour of special privileges at all, senator.

Senator McIlraith: I come now to paragraph (f) on page 3, where you say:

The minimum penalties prescribed in the bill would preclude probation because of S.663(1)(a) of the Canadian Criminal Code.

From that I assume you favour the sentence to probation under the comparatively recent amendment to the Criminal Code. Are you aware that this committee has recommended that that right, to be sentenced to probation, be done away with?

Professor Parker: Which particular right, senator?

Senator McIlraith: Well, in this committee, when dealing with the subject of parole, it was recommended that the sentencing to probation be done away with. There was quite a recommendation on that subject. Were you aware of it?

Professor Parker: No, I was not.

Senator McIlraith: My third point deals with paragraph (j) on page 3 where you state:

Provision should be made that the RCMP (or any other law enforcers) cannot use the writ of assistance particularly in relation to clause 48.

What I do not follow from your argument is, bearing in mind that clause 58 is a necessary part of the law in certain circumstances relating to trafficking, and bearing in mind the subsequent clauses, why, in effect, do you want to remove the right to use the writ of assistance in drug trafficking charges? I do not think that is what you intended, really.

Professor Parker: I only intended it in terms of this bill, and this does not include heroin, as far as I know, but only refers to cannabis in all its forms, and I happen to think that the writ of assistance is too strong a power to use in these circumstances. It is a general, blank warrant, and I am old-fashioned enough to believe that the Englishman's home is his castle, as an English judge said many, many years ago. I do not like the idea of RCMP officers wandering around with blank search warrants which they can use to break into someone's house in search of an ounce of cannabis.

Senator McIlraith: Well, I understand your argument if you are dealing with simple possession; but I do not understand your argument when you seem to retain the idea of a comparatively severe offence regarding trafficking. Bearing in mind that the real trafficking—the worst of the offences—is committed by people who operate on an international scale, and usually, now, almost invariably travel by air, why would you take away from law enforcement the writ of assistance? I am not dealing with the larger question of writs of assistance in general. I am dealing with the question of why, if the writ of assistance is going to be left at all, it should not apply to this offence.

Professor Parker: I really do have some trouble with this bill, as I say in the prefatory paragraphs, because I cannot really fathom whether you are looking upon cannabis as something terribly serious or something mildly serious. I get the feeling that cannabis is something mildly serious, and if it is something mildly serious, then I do not want the writ of assistance to apply to it.

I did hedge my bets, you will notice, by saying that this would certainly be true in relation to clause 48. I do not feel quite as strongly about trafficking as I do about simple possession; but I have the feeling that cannabis is not that

serious a problem, or, if you want me to go back to the first two paragraphs, I would say that we are really creating this problem for ourselves by not going into a licensing scheme.

Now, if you think cannabis, and possession of larger amounts of cannabis, is a very serious problem, then no doubt you will want to arm the RCMP and other law enforcement forces with the writ of assistance, but I did not think this was anything like as important as heroin or perhaps other gross forms of smuggling where the federal officers do use writs of assistance, and because I do not like the writ of assistance at all I would be prepared to wipe it out.

Senator McIlraith: Well, that is another question, but is it not what is said in the brief. The brief says:

Provision should be made that the RCMP . . . cannot use the writ of assistance particularly in relation to clause 48

Clause 48, of course, is the basis of clause 53 as well. That deals really with major trafficking.

Professor Parker: Well, perhaps if you want me to change it I would put:

Provision should be made that the RCMP . . . cannot use the writ of assistance in relation to the matters covered by Bill S-19, and particularly in relation to clause 48.

Senator McIlraith: Then could you tell me if you agree, or if you have any opinion, as to whether or not the professional traffickers—and here I am talking about professional drug traffickers, and not about some youngster at university who has sold something to two other students—if they are dealing in one drug, including marihuana, are quite likely to be also trafficking in other drugs? Would you agree with that proposition?

Professor Parker: I only have my personal eavesdropping evidence on that from my contacts in the student community. I get the impression that there are a fair number of young professional traffickers in various forms of cannabis. However, I also get the impression that these people are not involved in the heroin trade, but are young amateurs who have decided to turn professional to make a quick dollar. They do not seem to be involved in heroin. My contacts, though, are remarkably middle class, senator, so they may be atypical.

Senator Godfrey: I cannot quite follow Senator McIlraith's argument in connection with proposed section 53. A prosecution under section 48 stands by itself.

The Chairman: It is simple possession.

Senator Godfrey: It is simple possession, but if someone is prosecuted under section 53 they are also being prosecuted under section 49. It has nothing to do with section 48.

Senator Prowse: They are prosecuted for trafficking.

Senator Godfrey: The procedures have to be gone through.

Senator McIlraith: But not under section 48; under section 53(2). Under section 53 possession must be established.

Senator Godfrey: Oh, yes, but that has nothing to do with it.

Senator McIlraith: Yes, it does, because if possession cannot be proven the charge cannot be made to stick.

Senator Prowse: Do you know what a writ of assistance is, professor?

Professor Parker: Do I know what it is?

Senator Prowse: Yes.

Professor Parker: Yes.

Senator Prowse: Tell me, please.

Professor Parker: I am not sure if the one I have is in the modern form, but it looks like a court document.

Senator Prowse: Do you have a copy of one?

Professor Parker: Yes, but not with me.

Senator Prowse: But you have seen it?

Professor Parker: Yes; it used to be issued by the Exchequer Court on the application of some official, presumably.

Senator Prowse: A Minister of Justice.

Professor Parker: A Minister of Justice on behalf of the customs officers and the RCMP. It consists of nothing but a general blank warrant.

Senator Prowse: That is right.

Professor Parker: The evidence given in the House of Commons some years ago by a former Minister of Justice was to the effect that these writs are very carefully safeguarded. They are not splashed around all over the place, and I certainly believe that. They are checked by a senior officer and the more junior officer must apply saying that he wishes to go and search for contraband, heroin, or whatever. Then he has this general blank search warrant endorsed out to him for a specific occasion. When that occasion is finished he returns the warrant to his superior officer. However, that does not totally cover my misgivings, the fact that it is well administered. I am sure it is well administered.

Senator Prowse: There are, I believe, at any one time not more than 12 outstanding in the whole Dominion of Canada. That would make one for each province.

Professor Parker: I am sorry, senator, but what do you mean by "outstanding"?

Senator Prowse: I mean actually alive.

Professor Parker: Being used?

Senator Prowse: Capable of being used.

Professor Parker: Well, that is very contrary to the statistics given by the minister in the House of Commons, because they were in the hundreds. There were some hundreds issued under three different acts.

Senator Prowse: Let me tell you that in Alberta there were two, one in Calgary and one in Edmonton, held by the RCMP. They got them on special occasions by making all the accusations which are necessary to obtain a search warrant. They were used at that time. I know, because I was the prosecutor before the marihuana business started. After use a complete report had to be submitted. When

marihuana caught on the city police were brought in and this application was turned down because in no way were they going to turn it loose and let it get out of the hands of the RCMP. I do not know if that has been changed since.

Professor Parker: I have no cause to believe it has been changed.

Senator Prowse: And, believe me, in no case in which anyone has been busted for a little bit of this has it been the result of the deliberate use of one of these warrants. The inclusion of something like this in your brief actually hurts the good points you make, because it just makes you incredible.

Now let us go back further, to automatic cancellation. Section 662 provides that probation cannot be given following a sentence, after a term of imprisonment, or what was referred to by Senator McIlraith. That cannot be done. How would you feel if we decided that simple possession should be an offence, whether we put a limit on it or not? It would be in cases of possession for one's own use, that we would provide that the punishment should be merely a period of probation and that it be considered a civil penalty carrying with it no record—in other words, as soon as the person had completed his probation. The only thing he could get into trouble for would be a breach of his probation. How would you like that one?

Professor Parker: What do you understand by the phrase "civil penalty", because I heard it mentioned this morning?

Senator Prowse: I have trouble with it also. This has been tossed around. It is so that if anyone is asked if he has ever been convicted of a criminal offence he can say no, because it would be in the parking ticket category. This is a thought that occurs to me and it should not be considered as the thinking of the committee, because this is the first time the committee has heard of it and they may drown me before it gets any older. However, what would you think of that?

Professor Parker: I think that if I could be convinced that the federal legislation, whatever it is called—the Identification of Criminals Act—or whatever its title is, I have forgotten it now—

Senator Prowse: Yes, the Identification of Criminals Act applies ordinarily to indictable offences and for this one it brings them in in order to keep a record.

Professor Parker: If I could be convinced that that should be changed and if I could be convinced that it would be just the same as a speeding or parking offence, then if we are going to continue penalizing simple possession that would be the best way to do it.

Senator Croll: Let me ask you one question having to do with your line: how many times can you have a parking offence, or how many times can you have possession without having anything called to the attention of the public or anyone?

Professor Parker: Well, if we follow the parking ticket analogy, limitless times.

Senator Croll: So, on the matter of possession, does it make any difference, once, twice, any number of times? Nothing is done, nothing is said.

Professor Parker: Yes, and on that basis my suggestion would perhaps be preferable, where I say that after

three-year period of a clean record there would be an automatic cancellation.

Senator Croll: Yes, but senator Prowse told you that the trouble with that is that you can wipe it off all your life, but sooner or later you must answer to it and say yes. That is our problem. That is why I had marked in here that I want you to say something exactly on that, and paragraph (i) covers the same subject. How do you do it?

Professor Parker: Well, senator, I think it is very, very difficult. The way to change it may be to change the minds and the hearts of the public. I say that facetiously. You know darn well that an employer will put on a form, "Have you ever been charged with anything?" if he wants to. You have no authority over what an employer puts on a form. I gather from what Senator Croll said that he is worried about the man of middle age who is haunted by something he did when he was 17, or something he was charged with when he was 17. If an employer—particularly a big employer, like a government department or a big private employer—wants to put on his application form, "Were you ever charged with an offence?" there is no way you can stop that.

Similarly, if you have a witness on the stand and you want to question his credibility, it does not matter how many pieces of legislation you pass, if you have the right sort of jury and you say, "Is it not a fact that you were convicted of possession of marihuana in 1976?" those jurors, if they are narrow-minded, will be just as affected by it whether you make it a civil offence or a capital offence. It is still going to haunt the man. That is the great problem. There is no way to stop you, as the cross-examining lawyer, from asking that question.

Senator Prowse: I am sure I could think of two ways of doing it right now.

Senator Croll: Then go ahead and do it.

Senator Prowse: We are not here to do that. You say that middle-class people are not being picked up. In the city of Edmonton, I know a justice of the supreme court whose son is there. I know of numerous doctors and lawyers whose sons are there. I know at least one departmental head of the University of Alberta whose son spent two years in California because he could not come back. I know that we had a group of mothers here from British Columbia who were very concerned and said, "For goodness sake, don't take off the penalties!" I think the chairman would agree with me that they were middle-class people, and those are the people they represented.

I do not know what you do in Toronto, because I try to stay out of there, but across the country I think the police have been completely impartial in this. Of course, in the big ghettos where you have ghetto types of things, something else might happen, but that is a problem separate from the law and it is something that we shall probably have to deal with.

The Chairman: Professor Parker made it very clear in paragraph four on page one. He was talking of the experience in Toronto. It says:

If the experience in Toronto in the last few years is any indication, . . .

Senator Croll: I confirm whatever Senator Prowse has said. I am just waiting for the opportunity to open up.

Senator Prowse: So far as harassing them as long-hairs, is concerned we are fortunate that every one of our smaller communities is policed by the RCMP. Outside of our three largest cities, the smaller communities are policed by the RCMP under contract with the Attorney General. This does not become a problem. In paragraph three, on page one of your brief, you say:

. . .there are few instances in legal history of a milder punishment of a popular activity lessening its frequency.

Do you remember when there used to be a charge in the Criminal Code for drunk driving, which carried with it a mandatory seven days in jail?

Professor Parker: Yes.

Senator Prowse: Do you remember that no member of our youth was ever convicted?

Professor Parker: Yes.

Senator Godfrey: My clients were!

Senator Prowse: Where I come from, we had some good defence lawyers!

Senator Prowse: The next thing that happened is they changed it to impaired driving and they provided a fine. Then they started to get a whole lot of convictions. Then they got a breathalyzer, and I am sure the number of people who were driving then compared with today was fewer. In Alberta they put on a thing called a stop check. They authorized the police to go out and at certain times, without warning, throw a stop on any highway in the city, stop everyone coming through and say, "blow!" If they refused to blow, that was it. If they blew and failed, that was it. They caught fewer people on the stop checks than they caught on their ordinary patrols. There were not that many people who were running around not taking care of themselves. So I would not bet that by lessening the penalty you are going to do that, although you may be right.

With regard to possession and trafficking, you have already pointed out that there is a difference between clause 48 and clause 49(2). The light offences that we are thinking of are for clause 48. The evidence we have is that traffickers at some relatively early stage get mixed up with professional law breakers.

Professor Parker: What do you mean by "early stage," senator?

Senator Prowse: I mean that you may get in the high schools a fellow who gets three or four ounces to throw around, but the fellow he gets it from is part of a ring. We are getting to the people who are bringing in the heroin from Turkey. If you are in the drug business you tend to get into all of it, and the fellow who is selling the "fives" is undoubtedly being encouraged to try to push the heroin as well.

Do you not think we have to treat it a little tough and leave it where it is? I am satisfied, as a defence lawyer, that if you make the simplest change in your definition of trafficking, which is to take out the word "give," I could drive a whole convoy of five-ton trucks and twelve tanks through it, if you just take out the word "give," because I can collect the money at one time and make my deliveries at another. It is just a gimmick. This is our problem. Do not

forget that we have to leave the police with the tools to do the job.

The Chairman: I do not think, Senator Prowse, you should argue with the witness in that way. You can do that with the committee when the committee meets. We have another witness from Oregon and I want to hear him beginning not later than 3.30.

Senator Neiman: Perhaps I am a little more obtuse today than usual, but I would like Professor Parker to explain what he means by paragraph three. What are we getting at here?

Professor Parker: This was the thrust of my remark to Senator Prowse. that I get the distinct impression that we are flirting with the idea of legalization of simple possession without really doing it; yet, at the same time, we are talking about how serious a problem cannabis is. I find it extremely difficult to reconcile those two positions. From a pragmatic point of view, I think the simple possession charge is unlikely to work, because I do not think it will be enforced.

Senator Neiman: Why would it not be enforced?

Professor Parker: By public opinion, mostly.

Senator Neiman: What are you talking about when you say a "simple possession charge"? We do have a simple possession charge.

Professor Parker: Is it being enforced now? I do not get the impression that it is.

Senator Prowse: Every day.

Senator Neiman: I think you will agree that we always leave a certain licence with our police, with our Crown attorneys and with our judiciary in the way a certain charge is to be laid or prosecuted. Depending upon what hat you are wearing, you will get different points of view about whether this is a good or bad practice.

My feeling is that we should have some faith in our police system and our judicial system and allow them some latitude in this area. You are suggesting we should be more specific in this area of delineating the amount required for purposes of a trafficking offence. I can see a real advantage in that it would take a lot of the guess work out of it, but it would also take a great deal of the discretion away from our police and judicial systems. It has some very definite disadvantages in that a police officer who might ordinarily be inclined to lay a lesser charge, if he felt the circumstances so warranted, would be prevented from doing so. The same applies in this case. Unless we totally legalize marihuana, we are always going to have this adjustment process as to how a specific charge will be dealt with.

My other question relates to the reverse onus situation. Is there any jurisdiction, any other country, of which you are aware that employs the device of the reverse onus?

Professor Parker: There are other reverse onus situations in the Criminal Code in relation to certain offences. The one that comes to mind offhand is possession of burglary tools. We have the reverse onus situation for that offence because we think it is a serious problem and one which we want to nip in the bud.

Senator Neiman: But do you know whether this reverse onus situation is used under English law or American law?

Professor Parker: It is, in effect, used once you decide to wipe out the doctrine of *mens rea*. If you decide an offence is not going to require *mens rea*, you are really putting the burden on the accused to come up with some very reasonable excuse.

Senator Neiman: Without getting into the details of the cases you cite under paragraph 5(e) of your brief, is the law today that *mens rea* applies to all offences for which a criminal penalty could attach, regardless of whether or not it is an offence under the Criminal Code? I note, for example, that you cite the case of *Pierce Fisheries Ltd.* Was that an offence under the Criminal Code?

Professor Parker: No, that was under the fisheries legislation.

Senator Neiman: And yet it was held that the doctrine of *mens rea* did not apply?

Professor Parker: That is right. *Pierce Fisheries Ltd.* was automatically guilty when the undersized lobsters were found in this catch of 70,000 pounds of lobster.

Senator Prowse: I think he is right in the general principle, Senator Neiman. If it is not in the Criminal Code, then it is strict liability.

Senator Neiman: If it is strict liability, we would not have to stipulate it.

Professor Parker: There is a strong movement for a middle ground. Mr. Justice Liefv talked about this in the *R. v. V.K. Mason Construction Ltd.* case saying that there should be no conviction for anything less than negligence—a civil type of negligence—and the Law Reform Commission in its strict liability report has come out with much the same thing. It has said that if a person has a reasonable excuse, even if it is a strict liability offence, we should give him a defence. The requirement of a very reasonable excuse does place something of an onus on the accused.

To give you a very simple example, let us imagine that you were taking your sick father to the hospital and you parked beside an expired meter outside the Toronto General Hospital without putting a dime in the meter, and you were charged with illegal parking. If you came to court and told the prosecutor that your father was dying and you had to get him into the hospital as quickly as possible, quite likely the prosecutor would not even proceed with the case. However, if he did proceed and you came along with an excuse as reasonable as that, it is the Law Reform Commission's view that such a reasonable excuse should be a defence.

The excuse would have to be a very reasonable one when dealing with penalties that are very minor. Mr. Justice Liefv says that if the penalty is severe, such as a taxi driver losing his licence or a tavern operator losing his licence, then there should be a defence. These are not offences for which a jail term would be applicable, but certainly they are severe penalties in that the individuals concerned could lose their means of livelihood. These are provincial statutes, most of which contain the phrase, "without reasonable excuse," or something along those lines.

Senator Neiman: One further comment. I have the feeling that Senator Prowse is wrong about the number of writs of assistance. I cannot believe that there have only been 12.

Senator Prowse: There may be more.

Senator Neiman: I think there are far more than that. If there were only 12, I wonder how Alberta came to end up with two of them, because it is such a law-abiding province!

Senator Croll: Dealing with the reverse onus situation, we have that under the Customs Tariff Act and many other statutes. We do not like it, but we have learned to live with it. We will get rid of it as soon as we can.

I have been reading your brief, trying to determine why you came here . . .

The Chairman: Senator Croll says that to all the witnesses.

Senator Croll: It is trying to say something. It has not quite come across. It seems to me that you have said something to me, but not completely. I would ask you to look at subparagraph (i) and to come up with a solution to it. Go home and think about it; talk to the boys, or whatever you have to do. That is the one thing that is going to haunt us. This is just the beginning. It is going to continue for five years, six years, ten years before we get to the point where we really understand and know what to do. In the meantime, we may be doing a terrific amount of damage unless we do something. Think about it and write to the chairman and tell us how to deal with it. If you can come up with a solution to that problem, we will have really gotten something out of you.

I, too, am from Toronto and all I hear is this business about the laws being made for the middle class and the other people not being considered. The people who complain to me about their children getting involved in this sort of business, I assure you, are middle class. I know others do too, but certainly a police officer does not walk up and say, "I cannot touch you because you are middle class; I am looking for somebody else!"—somebody, perhaps, with long hair. Besides, long hair is out of style. You know that, don't you? Could you make a case for legalization? You are a logical man. Can a logical case be made for legalization at this stage?

Professor Parker: You will recall, senator, I started out by saying that this was a brief by a cynical lawyer who didn't really have any hope for his first three points. If you want me to explain why I am here, it is to make some technical legal objections to the bill as it is presently drafted.

I cannot make a very good case for simple possession because it is the middle ground and there is a terrific number of difficulties. The Le Dain Commission referred to some of them. If you legalize simple possession, you are left with terrible problems about trafficking, because you simply put all of the pressure on the trafficking aspect. I think a much better case can be made for the licensing system than for the simple possession system. I know all the social harm that a drug-drenched society can end up with, but we are perfectly willing to live with the harm that the automobile does in society. If this committee were looking at empirical evidence as to whether we should legalize the automobile, and the evidence of social harm done by the automobile in the last 60 or 80 years was brought forward, I think we would probably never legalize it. I am perfectly aware of that. However, if you want a rational scheme, the licensing system, in spite of its problems, is much better than simple possession, because simple possession is a middle ground.

Senator Croll: You have just earned your way to the top for me, because Senator Prowse and I were discussing it this afternoon, trying to find that solution. You have come along very nicely. Thank you for coming.

The Chairman: Thank you, Professor Parker.

Senator Prowse: Thank you. That is a good point you made.

The Chairman: I want to thank you on behalf of the committee.

Our next witness is Mr. J. Patrick Horton. Mr. Horton is Lane County District Attorney in Oregon. We have heard many references to the legislation enacted in Oregon a little over a year ago, and Mr. Horton was good enough to accept our invitation to tell us about it. Go ahead, Mr. Horton.

Mr. J. Patrick Horton, Lane County District Attorney, Eugene, Oregon; U.S.A.: Thank you, Mr. Chairman.

First a "thank you" to all of you for inviting me here today. I have had the opportunity of talking to many sister states and to the United States federal government about what has gone on in Oregon, and I have been accused, somewhat facetiously, perhaps, by sister states to Oregon, of being commissioned by the governor of our state to go out and pass the word and encourage other governments either to legalize or decriminalize marihuana in order that all of the long-haired hippie transient types will stay out of Oregon, since they are now permitted to smoke marihuana there without a great deal of hassle or problem. I assure you that that is not the reason for my appearance today.

I want to thank Senator Neiman for supplying me with certain documents and material which I have reviewed, though on a somewhat cursory basis, I must confess. It would be presumptuous, I suppose, to debate the intricacies of your proposed legislation, and I will not do that. I hope, however, that I may help in a small way with the problem you have in debating this timely topic, sharing with you some of the things that have happened in Oregon, both before October 1973, which of course was the time when small amounts of marihuana were decriminalized, and since that time.

It may be appropriate to put my biases and interests of which I have two, on the table. First of all, I am a law enforcement official, concerned with the fixed and valuable resources of law enforcement—namely, police, judges, courts and, I hope, prosecutors. So allocation of those resources on a timely basis is of concern to me. I also favour reform of the marihuana laws. In fact, when I ran for district attorney in 1972 in Oregon, that was one of the platforms of my campaign; that is, reformation of the marihuana laws. I will attempt, however, to be as objective and as honest as I can, in view of those biases, about what has happened in Oregon since October 1973.

First of all, what the law was before may be of some interest to you. It was a criminal offence either to possess, sell, transfer, cultivate or in any other way distribute marihuana, which was classified as a narcotic drug.

We had, in 1971, a complete reformation of our criminal code. A citation program was provided for at that time. Basically, what that means is that a police officer may issue a ticket to anyone who has technically been arrested. The issuance of this ticket is in lieu of taking that person into custody after the arrest. That was used extensively in my jurisdiction for marihuana cases, both cases involving

less than an ounce and over an ounce, for approximately the ten-month period of time in 1973 before it was decriminalized. So we used tickets for marihuana offenders while marihuana possession was still a crime. I bring that to your attention because the citation program is an important part of our decriminalization process on a very practical level. It is a vehicle which police officers use to implement the decriminalization statute.

In 1973 possession of less than an ounce of marihuana or the use thereof was no longer classified as a criminal offence. The only sanction that the court can impose is a \$100 fine. Now, there is no jail sentence, no criminal conviction or record for the offender.

The Chairman: Is that a maximum?

Mr. Horton: That is the maximum fine. The average or mean fine is around \$35 or \$40 for less than an ounce. The citation system is the way in which most people get before our courts, although officers, technically, must arrest the suspect before he can issue the ticket; so we have the provision in our law that if a person is of a transient type, and the officer suspects that he may not appear to testify in court, the officer may transport him to a police station or holding facility where he can be fingerprinted and photographed and efforts to check into his identity made at that time.

Such a system was a choice from several. First, there was a suggestion that we legalize it, that we license it, that the state make some effort to control the distribution thereof. That, of course, was rejected. The other suggestion we talked about at the time was to establish an amount which is presumptive of sale, possessing it with the intent to sell it and to get away from a fixed amount. We ultimately went to the fixed amount concept, I think, in part, because of our citation program.

As a law enforcement officer I was concerned about how an officer on the street decides what is an ounce or less. Must we, in addition to the badge and nightstick we furnish, give him scales so that he can sit there and weigh the material? And then, of course, we had the finer points: Are we talking about the leaf itself? Are we going to extract from weight comparisons the seeds and stalks? You can see how silly it becomes. So, regardless of the amount, whether it is a cigarette or whether it is a pound, the officer gives a ticket in most cases, or he can take the person into custody—regardless of the amount. He cites him to appear in court, and, of course, in that interim our laboratory has conducted the appropriate analysis to determine what the substance is. The report is then forwarded to the prosecutor's office and the prosecutor makes the decision as to whether or not to charge a civil offence or a crime. Practically, that is the way the system works.

Now a little about the history of it. Going back and reflecting on the debates, not only of my campaign but also the debates before our legislature, I feel, and have felt for a long time, that when we talk about marihuana reform the issue becomes centred over whether or not it is harmful. I for one think that it is a harmful drug. It is a harmful substance that neither the state nor any government should encourage or sanction the use of. I have never tried marihuana; I have no desire to, really; but I do think it is harmful. That, however, is not the issue when we talk about the reformation of our criminal laws. At least, that was not the case in Oregon. Once again I speak to you only about what happened in Oregon, and not about what you are doing here today.

We tried to narrowly focus the issue. As criminal lawyers and as legislators we started off with the precept that the penalties or the sanctions in the criminal code should be proportionate to what the offence is; so if one rapes or kills or plunders, some severe penalty is probably in order. But what about possession of small amounts of marihuana? What effect does that act alone have on the rest of society? Our Schaeffer commission reports showed conclusively, at least to our legislators, that, first, the casual use of marihuana has no causal connection with hard core drug addiction; second, there is no causal connection between violent crimes and the consumption of marihuana. Therefore we asked ourselves, "What is the purpose of harsh criminal laws?" One person spoke up and said, "Deterrent. We are deterring people from smoking marihuana, which is a harmful substance." Or course, however, statistically, that is not true, from the limited number of arrests back in 1950 to the more than 420,000 arrests in the United States last year. I also had the opportunity of looking over some of your statistics for Canada and saw that proportionately they are about the same, with a large number of marihuana arrests. So we cannot blame it on the fact that law enforcement and the courts have not done their jobs, because we have attempted to enforce marihuana laws, yet more people use the substance.

Focussing on the issue, we felt that jail was an inappropriate remedy for those who casually or recreationally use marihuana. We felt that we had an obligation to the people to discourage its use. Therefore, some type of sanction was appropriate. There were very political problems involved also. As John Kennedy pointed out in his preface to *Profiles in Courage*, elected politicians—this does not necessarily apply to this group of people—are worried about being re-elected. Our legislators were faced with a first time thing, decriminalizing marihuana, yet they had to return to their constituencies. That is why the half step; that is why we compromise; that is why we have a sanction against its use. We have readjusted the penalties to what we feel are more fair and more reasonable.

Let me give you a little background from a law enforcement point of view. I have spent four years as an assistant prosecutor, a year as a criminal law teacher, a year as a defence attorney, and then two years as district attorney. When I was an assistant prosecutor I headed an inter-agency narcotics team composed of police officers and myself. I had the opportunity to arrest many people for marihuana offences. I convicted many and sent some to the penitentiary.

The marihuana triangle, similar in its mystical qualities to the Bermuda triangle, was a theory espoused by many police officers and myself at one time. The way it works is that police officers go into a community and buy marihuana in small amounts from people on the street. They then, in some fashion, obtain information from that person as to where he got the drug. There is some sort of magical triangle, that if we follow that step, that process, we will find the organization or individual responsible for all narcotic, barbiturate and amphetamine traffic in our communities. That is a myth; it has never worked and it is not true. Those, for the most part at least, who traffic in hard-core narcotics find the profit factor and the fact that there are so many non-profit type sales in marihuana that they just do not get involved in it. Most of those who sell marihuana and transfer it back and forth in small quantities do it as a non-remunerative process and non-profit type of process. There are those who traffic in the drug who profit by it, of course, but attempting to get at the

heroin distributor by arresting people for possessing small amounts of marihuana is not the process, I submit, that should be used by law enforcement. We can do one of two things. We can appeal to our police and prosecutors to change internally the process they use. I submit that statistically that is kind of borne out here in Canada also. When you look at the total number of drug convictions that relate to marihuana versus the total number of drug convictions overall, a very high percentage are caught up in the marihuana program.

Marihuana is easy to find; it is an almost ubiquitous substance; it is possessed and used by many. So police, for some reason, cannot prioritize their work to leave marihuana and get to the more important, hard-core narcotics traffic. It has always been a choice for law enforcement as to where to spend their time and how to use their resources. We find that, for whatever reason, law enforcement resources are being eaten up by marihuana.

By decriminalizing marihuana we found a refreshing thing happen, in Oregon at least. We are able now to concentrate on areas which we feel are of more social value, of more commitment to the people—heroin, amphetamines, barbiturates and the like. The other effects that it has had in Oregon are obvious, in my opinion. One-third of our criminal trial dockets used to be composed of marihuana cases; no longer is that true. We are preserving that vital resource, court-room space, for the truly significant and serious offences to the community. That same statistic is reflected by jail population, mainly those who are accused of the commission of offences, pre-conviction type people. The jails are filled with the true criminal now, rather than the youthful drug offender who, because of his status in the community, is either a labourer or a student and many times is unable to post the necessary security to gain his release pre-trial.

The rapport between the community and the police is good and has improved substantially. Politically, most politicians in the state of Oregon now favour decriminalization as a process and are not opposed to it. The general citizenry has accepted the process well and is supportive of it. That is not to say, of course, that some are not.

By any measureable standard I can see, both as an elected official and as a law enforcement officer, I believe decriminalization has worked well in Oregon and has been well accepted.

That is about the sum total of what I can submit to you today, Mr. Chairman, unless there are questions.

Senator Croll: First of all, I like the way you talk and if I ever get to be a voter I will vote for you, you can depend on that!

However, tell me this: what makes you a state unlike any other state? You are all alone in the United States. What is there? North and south of you are the same kind of people; you are part of the west coast. Here you are on a new kind of adventure which is a little dangerous, or it started out to be dangerous, although you are proving something. What makes you different?

Mr. Horton: I am certainly not a sociologist, senator, but I can share with you some of my ideas. Many people in Oregon are not native Oregonians; most of us come from elsewhere. The reason we go to Oregon is the same reason that, perhaps, people come to or stay in this country; that is, there is no political machine in Oregon, the government is not corrupt and there is not much of a tradition or a

family which controls government in Oregon. In the south-east and in larger cities, of course, we do have that type of thing. So it is those who are disenchanted or disenfranchised, perhaps, in other parts of the country who come to Oregon. It is a youthful community, an unpopulous state with, I believe, two million persons. We just do not have many of the traditional things to overcome that other states do have. Now, that is a personal observation.

Senator Croll: How does your incidence of crime compare to the remainder of the country?

Mr. Horton: It is very much the same; we have a lot of violent crime.

Senator Croll: What sort of crime do you have there which is perhaps different from any of the other states? Is there anything special?

Mr. Horton: No, I do not believe there is.

Senator Croll: How did you get into this experiment? You were there from the beginning; somebody took a chance. Who did it, and why?

Mr. Horton: Back in 1971 we had a commission that had been at work for four years to completely reform our criminal code. We did away with something like 147 specific criminal offences—just threw them out. We decriminalized offences at that time which were controversial, such as many sexual type offences. Homosexuality had been a crime; we legalized it. There were many things, such as lewd cohabitation; a man and woman living together without benefit of a marriage licence had been a crime. We decriminalized that. We decriminalized drunkenness, viewed it as an illness and set up detoxification centres for the offence of drunkenness rather than jail. So we fought many of the philosophical battles in 1971. When in 1973 we brought up the issue of marihuana, it was not as radical an issue philosophically as it is for other states and other governments who are somewhat more traditional in their approach to victimless type crimes.

Senator Croll: All the papers in the United States look upon your experiment with favour; they recommend it. Yet, none of the other states has really put their teeth into it as you have.

Mr. Horton: It is a matter of timing. Legislators in many states meet once every two years. This year, really, is the first opportunity for many states to talk about the issue. So I can say that California, Colorado, Hawaii, Tennessee, Texas, New York, as well as perhaps five or ten more states, currently have this issue before them, as well as the United States government. The federal government of the United States also is seriously considering decriminalizing marihuana.

Senator Croll: You have the man there, and, as you say, you have decided that you are going to charge him, that it will be a civil charge. He walks in and pays a \$100 or a \$50 fine. You are at that point. What goes on the record?

Mr. Horton: Our FBI "rap" sheet, or FBI record—

Senator Croll: I am not talking about the FBI. You are the local county prosecutor.

Mr. Horton: I am a state prosecutor.

Senator Croll: Let us get away from the FBI for a moment.

Mr. Horton: Not really, because we have a computerized criminal history for every state. We enter into a computer for the FBI all criminal convictions at any time a person is fingerprinted or photographed. So an FBI "rap" sheet will reflect all criminal offences, as well as when a man goes into the armed services in the United States, because he is fingerprinted and photographed.

Senator Croll: But that was not my question.

Mr. Horton: So when a person is charged with possessing less than an ounce of marihuana, and he is one of the few people who are, in fact, fingerprinted and marked, there will be, on the FBI "rap" sheet, an entry showing that process and the fact that he was charged with a civil violation. By the same token, on our state criminal history file he is not convicted of a crime; it is a civil offence.

Senator Croll: But you have him recorded on there. Call it what you like, but you have him on the criminal list. You have him recorded as having been guilty of a civil offence. He is on there.

Mr. Horton: Yes.

Senator Croll: The bank manager writes to you and says, "Mr. Horton, John Smith is applying for a job. Give me anything you know about him." What do you write about him?

Mr. Horton: Number one, by recent legislation that request would be denied because it is confidential. But let us assume that you ask the applicant if he has ever been arrested for a crime. He would say no. You would ask him, "Have you ever been convicted of a crime?" and he would say "No."

Senator Croll: But every now and then you are asked by authorities, such as the passport people, to provide information. What do you write?

Mr. Horton: We would say "No, he has never been convicted of a crime."

Senator Croll: When you say that he has never been convicted of a crime, you have to send the sheet saying on such-and-such a date he appeared and was fined \$40.

Mr. Horton: No more than I would have to if he were accused of littering garbage on the street, or classified as a defendant in a securities transaction law suit or personal injury law suit.

Senator Croll: This one has been a bad boy. He did it four times. Where is he now?

Mr. Horton: He is at precisely the same place that he would be if he did it once.

Senator Croll: You are saying that he has something on his sheet but it is not a crime; it is merely a record.

Mr. Horton: That is correct, sir.

Senator Croll: If an employer asks the question, he can honestly answer "No."

Mr. Horton: That is correct. I was present and heard the highly qualified witness testify this morning. He was a pharmacologist, I believe. This is a very real problem for young people who are precluded from engaging in the profession of medicine, law or teaching, who have on their record a criminal conviction. So I respectfully disagree with the previous witness. It is a problem, and even though

there have been no studies, I can assure you it is a problem where I come from.

The Chairman: Have employers changed the question at all since you made it a civil offence? For example, could they ask, "Have you ever been charged with an offence?"

Mr. Horton: They could, except that it is very difficult to do that because of the particular language we use in Oregon. An offence is one of three things: either a crime, which can be a felony or misdemeanour, or a violation. A violation is a non-criminal offence, but it is still an offence, technically, under our code. So if you were to ask that, I suppose everyone would be confused by the answer, regardless of what it might be, either yes or no.

The Chairman: What if the employer used the word "violation"?

Mr. Horton: With regard to the question, "Have you ever been convicted of a violation?" I do not know if that would be a precise enough term in layman's language to elicit a proper response; but to the question "Have you ever been accused of violating any drug law, civil or criminal?" he would probably have to say, "Yes." But I do not know the answer to your precise question, whether or not the forms have been changed.

Senator Croll: Have you had any trouble with bonding companies? That is where the trouble is—with the bonding or passport people on the questions and answers they receive?

Mr. Horton: I don't know.

The Chairman: The changes you have been talking about in relation to marihuana, I assume, relate only to possession.

Mr. Horton: Possession or use.

The Chairman: You have not modified the law on trafficking?

Mr. Horton: No. We do not have a particular trafficking statute. We have one statute called criminal activity in drugs, which relates to every narcotic or dangerous drug, and to every conceivable transaction involving that drug, from possession to sale, to transfer, to giving it, to trafficking in it, to growing it. We merely allege that the person was engaged in criminal activity in drugs, and as a matter of proof, to the jury or judge explain the conduct he was involved in. That way the judge has full discretion to either sentence to the penitentiary or suspend sentence and impose a fine, depending upon the facts of the case. So, if we had a sale of heroin for a large amount of money, the judge could put him away where he belongs, in the penitentiary. If we had a sale of marihuana, of a cigarette, in a non-profit type setting, the judge could deal with that as fairly as he could, based on the facts. So we have no minimum sentences and no trafficking *per se*.

Senator Neiman: On that point, under that particular act you do not charge a person with a specific offence; it is just for engaging in criminal activity with respect to a specified drug—is that all the charge is, and the jury determines the exact transaction?

Mr. Horton: In the gravamen of the pleading, we may be more specific and say "to wit," followed by "that he sold the narcotic drug heroin to . . . "on such-and-such a date," or "was in possession of amphetamines on such a date."

Senator Neiman: May I go back to the criminal record aspect? Did you do anything retroactively? What did you do, if anything, about people who had already been convicted of simple possession?

Mr. Horton: We have an expungement statute whereby an individual who has been convicted of a certain type of crime may petition the court to have that conviction expunged from the record. That is effective in the state, but, of course, it is not very effective on a federal level because of the FBI statistics. The FBI may or may not in fact, expunge that criminal conviction from the FBI "rap" sheet.

Senator Neiman: How is it working? Ours is very long and onerous. Are you finding the same problem?

Mr. Horton: It is a difficult thing with which to work; many defence attorneys feel that way.

Senator Neiman: Do you think it is really worthwhile? This is the problem that is bothering me. We have had recommendations both ways. We have had people tell us that there should be a criminal record but it should be automatically expunged. I cannot see, from the evidence we have had to date, that it is working well at all in practical terms and in numerical terms, really.

I am wondering whether we would have to get back to your type of three levels of crime or misdemeanors in order to arrive at that. I think this is how you were able to achieve this change in you laws. You changed your concept as to what crimes and misdemeanors were all about. I think this was the stepping stone, and this is what is being recommended by our own Law Reform Commission.

Dr. Kalant referred to the Oregon experience this morning and said that it was possible that the population of Oregon used much less marihuana than, say, the population of New York or California. I have not examined your statistical data, but did you find that on a statistics basis the population of Oregon in fact did not use marihuana to the same extent as the populations of other states?

Mr. Horton: I cannot imagine that to be the case, senator. I cannot cite any statistics in that respect, but I do not think that Oregon is unique insofar as the young people who recreationally use drugs are concerned. I think a lot of them do use marihuana.

I understand that **Dr. Bryant** of the Drug Abuse Council appeared before your committee, so you have had the benefit of those statistics. I do not intend to go over them with you, but the statistics of the Drug Abuse Council were very enlightening in dispelling some concepts that actually turned out to be myths as to what happens when you decriminalize the law respecting marihuana. It is simply not true that more people are going to use it. In fact, it is our experience that people use less of this substance than ever before.

Senator Neiman: In terms of your court procedures, have you found any dramatic changes?

Mr. Horton: I should have mentioned that earlier. I think it is important and is of significance. As early as January 1973, ten months before we decriminalized the law, I went around to all of the police departments in Lane County and asked them to institute the citation system in respect of drug offences. We promised to monitor the appearance rate of those people who were given citations. We looked at the first 50 citations issued in respect of

marihuana alone, regardless of the amount, and we followed the process through to the court and found that 100 per cent of those people appeared in court. We did not have one person who failed to appear. Of the people who appeared, over 60 per cent pleaded guilty at the time of arraignment, which was virtually unheard of in our judicial process. Ordinarily, most people come in, ask for a lawyer, plead guilty and then either try for plea bargaining or an indefinite postponement, or whatever, whereas under the citation system just over 60 per cent pleaded guilty to the offence at the time of arraignment. We continued using the citation program and it dispelled the myth that people who were given tickets do not appear in court. They did appear. That I think, re-affirmed my belief in the system.

Senator Neiman: There was another point made by **Dr. Kalant** this morning that was rather interesting in terms of the fact that if we were to decriminalize possession, more people would try marihuana simply because the deterrent factor is no longer present and, in addition, more people would be inclined to use it in conjunction with alcohol. Have you found there to be an increase in cases of impaired drivers where you suspect cannabis is also involved?

Mr. Horton: It is difficult to answer that question, senator. There is no known test that can be given to a driver to determine whether or not he has consumed marihuana or THC.

There is one process whereby the lung is removed, and some police officers have offered that as a possible solution to the problem. I have been told that there is a process under way now to refine the testing technique.

Senator Neiman: You have not monitored it in any way through the court process? You have not asked those individuals charged whether they were impaired as a result of alcohol only or whether it was alcohol in conjunction with marihuana?

Mr. Horton: No. I feel there should be strict criminal law for driving under the influence of any intoxicant, and I think government funding should be utilized to develop testing techniques whereby our law enforcement officers can bring these people before the bar of justice, whether the intoxicant is marihuana or alcohol.

The Chairman: Do you draw a distinction between marihuana and hashish? It has been suggested to us that a distinction should be drawn because hashish is so much more powerful.

Mr. Horton: When Oregon decriminalized the law respecting marihuana, it neglected this very issue. One of the judges called me one day and asked me what I would do in the case of a person in possession of less than one ounce of hashish. My reply, of course, was that since hashish legally is a derivative of the narcotic drug marihuana, it would be marihuana and less than one ounce is not a crime. That got back to the state legislature and, of course, they realized they had not thought about it. By special session in February of the next year the legislature removed hashish from the decriminalization statute. The reason for removing it from the statute was its potency and the fact that one ounce has a street value of \$100 versus a street value of \$10 or \$15 for one ounce of marihuana.

We now talk about the leafy vegetable material only. There was some debate in the special session about having a proportionate amount of hashish decriminalized but, of

course, that would be difficult because it involves fractions of an ounce. As a matter of clean process, it was decided that hashish was out and marihuana was in.

Senator Prowse: Hashish and hashish oil are out?

Mr. Horton: Yes.

The Chairman: So the citation system does not apply to someone found in possession of hashish?

Mr. Horton: Yes, the citation system applies to class 3 felonies and narcotic offences. The citation program is just a vehicle by which a person is brought into the court process, and it is a substitute for pre-trial incarceration and bail.

Senator Neiman: We have a bail procedure system here that is working quite well. It applies not only to these particular offences, but to all types of offences.

The Chairman: I have one further supplementary question to what Senator Neiman asked. You talked about expunging the record on application. What evidence do you use to prove a subsequent offence if the record has been expunged? I am not a criminal lawyer; I just want that information.

Mr. Horton: To my knowledge, Mr. Chairman, there is no such process.

Senator Prowse: There is no need to prove a subsequent offence unless there is a higher penalty for a second offence.

Senator Godfrey: The proposal in this bill is for a fine to a maximum of \$500 for a first offence, and to a maximum of \$1,000 for a second offence. I am somewhat concerned as to why there should be a distinction between a first and second offence. It seems to me that the guy who is caught twice is just more unlucky than other people.

I note the fine schedule in Oregon is \$100 to \$500. How do you decide what the fine should be? You must have considered this problem before bringing in the new law. Would you care to comment on that?

Mr. Horton: The fine, of course, is up to the judge. I suspect that it would depend upon the circumstances of each case and whether or not there is a prior criminal record. The age of the defendant might also be a factor in any sentence imposed. An 18-year old person who worked for a living, or was a student, and who was in possession of a marihuana cigarette on a limited income, would probably be looking at a \$25 or \$30 fine. I do not know. That is pretty much conjecture by me as to what a judge might do.

Senator Prowse: Or what the judge had for breakfast!

Mr. Horton: What he had for breakfast, or what kind of tie he had on, or if his wife was mean to him the night before, or something like that.

Senator Croll: I asked you what made you people different from anybody else. I have never been to Oregon. The same escapes me now, but who was the senator from Oregon who died?

Mr. Horton: Neuburger.

Senator Croll: No, the one following.

The Chairman: Morse, Wayne Morse.

Senator Croll: Yes. I forgot the name. Yours was the kind of tradition that very few states had. It was a liberal tradition from which this could flow. I mean, that was something you did not mention. Both of those men were of that liberal tradition, and so was the wife of one of them.

The Chairman: You mean liberal with a small "l".

Senator Croll: I am talking about the democratic tradition. In your state does that have anything to do with that sort of approach?

Mr. Horton: It is interesting that so many elected officials in Oregon are Republicans. The Republican Party is a traditionally conservative, *status quo* oriented type party, and yet they have been directly responsible for accomplishing a great deal of social reform, for example, in the area of ecology, in the area of criminal law reform, and so on. We have 60-40 Democrat representation over the Republican representation, and yet we consistently elect Republicans.

Senator Croll: You elect personalities more than anything. You have been lucky in that respect.

The Chairman: Wayne Morris was a Democrat.

Senator Croll: He was both.

Mr. Horton: It underscores the lack of a political machine such as you see in Chicago. I do not want to get into political commentary on Mayor Daley in Chicago, but that is the type of thing we do not have in Oregon, for good or bad.

The Chairman: Mr. Horton, I assume you do not have a minimum penalty.

Mr. Horton: No.

The Chairman: Do you have a special penalty for importing?

Mr. Horton: No. It is the same penalty for any type of activity in connection with drugs.

The Chairman: Cultivation?

Mr. Horton: The same penalty.

Senator Prowse: But that is a criminal activity.

Mr. Horton: Yes.

Senator Prowse: Anything except possession is left in the criminal field?

Mr. Horton: Yes.

The Chairman: Including the possession of hashish?

Mr. Horton: Possession of an ounce and a half of marihuana is a crime, technically, and we leave it to the discretion of the judge as to what he is going to do with that offence.

Senator Croll: What does an ounce and a half look like? How many cigarettes is it? I have asked that question before and nobody ever answers it. Is it a package, a cigarette, or what is it?

Mr. Horton: I will speak as a non-user layman here. An ounce of marihuana was, we felt, the equivalent of a lid of marihuana. The lid is a baggy, which will make perhaps 10

to 20 cigarettes, depending on the amount in the baggy. It is the common way that marihuana in small forms is transferred from one person to another.

Senator Croll: Did you say in a bag?

Mr. Horton: In a baggy. Where I come from it is called a lid. Have you ever seen the cellophane baggies that sandwiches are wrapped in?

Senator Croll: Oh, yes.

Mr. Horton: That is what I am talking about, one of those baggies; they are made of cellophane. It used to be that in Oregon we suspected that an average lid was probably an ounce and a half, or two ounces, until we decriminalized it and said that less than an ounce of marihuana was no longer a crime. Therefore the street people started making their bags an ounce, to comply with the law. So we were able to accomplish some change.

Senator Croll: How many cigarettes did you say it would make?

Mr. Horton: Ten, 15, 20; probably no more than 20. There may be someone in the audience who could enlighten me on that, but that is my understanding. I see no one wants to admit knowledge! Twenty sounds good.

Senator Neiman: I just wanted to get a little further information on your procedure. In Oregon, when a person is given a ticket or a citation, the goods are seized and the material goes into a lab for testing. We have the same procedure here, I think, and there again we seem to have bogged down in testing procedures that take months. Is it a long procedure in Oregon, or have you worked out something fairly perfunctory?

Mr. Horton: No, it does not take long; just a few days.

Senator Prowse: You have people doing nothing else?

Mr. Horton: It is pretty easy to identify marihuana; it is not a very complex process, I am told.

Senator Neiman: Is that right? Maybe this is getting too technical, but when we speak of one ounce, I have heard of instances here that were given to us where the accused were charged with possession of a couple of hundred pounds; but by the time they took it in and stripped off all the leaves, and did all this sort of thing, it came down to a very small amount. When you are talking about marihuana and testing it, you are normally talking of some sort of form of it that is ready for smoking, or whatever they do with it, is that right?

Mr. Horton: Yes.

Senator Neiman: And that is the charge that is laid. Once it is brought down to its lowest common denominator, or usable form, that is when you determine what the charge will be, whether it is over an ounce or less than an ounce.

Mr. Horton: Yes. We do not isolate the stems and the stalks and the seeds from the leafy vegetable material. We do not do that; it is just by weight. You get a person in possession of a couple of lids of marihuana, and most policemen on the street know what it looks like. A sample of that is given analysis by our chemists; a report is forwarded to us; we file a charge; the person comes and forfeits bail, and—

Senator Croll: Is there a smell to it?

Mr. Horton: Burning marihuana?

Senator Croll: It smells better than the chairman's pipe, I hope!

Mr. Horton: I cannot comment on this; I am very close to the chairman!

The Chairman: Senator Godfrey—and not about my pipe, please!

Senator Godfrey: Did you find, after you passed this law, that there was a flaunting in public by people smoking marihuana? Did it become more obvious?

Mr. Horton: Absolutely not. That is one of the most refreshing things about it. We found that the citizenry responded with a great deal of good faith. There was no public display of smoking of the substance in theatres, or mall areas downtown, or on public street corners. Most marihuana offences are detected in one or two ways. I think it is probably true here too. You have the case where a police officer stops a car, and for some reason or other searches the car and finds marihuana, or where a person is taken custody on an unrelated offence and is searched at the jail or holding facility and marihuana is found. Those two processes account for a substantial number of arrests or the tickets that are issued. Very few people smoke in public.

Senator Prowse: Your ounce would be, from what I gather—perhaps we might make another analogy which is perhaps easier to follow, since I do not think we know what 15 or 20 cigarettes would look like—more or less the same as though a guy had a pint of liquor.

Mr. Horton: I do not know. I would say that a pint of liquor would probably be more socially harmful in terms of what that individual might do.

Senator Prowse: Than the ounce of marihuana?

Mr. Horton: Than the ounce of marihuana. I would say it is like a pack of cigarettes. I would say it is the equivalent of a pack of cigarettes.

The Chairman: Coming back for a moment, Mr. Horton, to the term "civil offence", possession of less than an ounce of marihuana is a civil offence. Is the term a technical term in your law?

Mr. Horton: Yes.

The Chairman: Does it mean a violation which is not a criminal violation, or how do you define it?

Mr. Horton: It is a technical term, Mr. Chairman. I will try to define it. It is a violation of a statute of the state of Oregon which can either be civil or criminal in nature. If it is criminal in nature it can either be a felony or a misdemeanor. A felony, of course, is where the possibility of incarceration in a penitentiary is present, and a misdemeanor is where only a county jail sentence can be imposed in addition to a fine. A violation is a sub-category of the term "offence," but it is not criminal in nature, where only a fine can be imposed by the court and there are no disabilities attendant upon a criminal conviction.

The Chairman: And the violation is what you call a civil offence.

Mr. Horton: Yes. The violation is technically an offence. A violation is civil in nature. A crime is an offence, but has certain obvious disabilities attendant upon it.

Senator Prowse: Mr. Chairman, I would like to ask this question of you, because I think you have had a lot to do with constitutional matters. I just had the horrible thought that we might use that same term, but the federal government has authority over federal matters, and if we create a civil offence we are back into provincial authority.

The Chairman: Well, we do run into a constitutional problem.

Senator Prowse: Yes, we will have to stay up some night and figure out a way to do this.

Senator Croll: Perhaps just to help make the day for the witness, the last report that I saw indicated that after a year a state-wide evaluation in Oregon found that 40 per cent of the people who acknowledged that they had used pot said that they had decreased their consumption. Fifty-two per cent reported no change. About 5 or 7 per cent admitted that they had increased their use of it. That was the report at the end of one year. Is that about right?

Mr. Horton: Yes, sir.

Senator Croll: The New York Times is still right.

Mr. Horton: It is right. That was taken from the survey conducted by the Drug Abuse Council. Of those 42 per cent who indicated a decrease in the usage, it was interesting to note that the majority said it was for health reasons, which underscores the necessity, in my opinion, of having good public health education programs about marihuana and about the harmful effects which marihuana might have on an individual by reason of continued use. Only 4 per cent of the people said the threat or the fear of criminal prosecution was the reason for a decrease in the usage of marihuana.

The Chairman: Is it possible there is a decrease in the use of marihuana because of a switch to alcohol? We have been told that in some cases that has been happening.

Mr. Horton: It may be.

Senator Fergusson: Mr. Chairman, the witness mentioned that he had found that what was needed was a good educational program. How did he go about setting up that educational program?

Mr. Horton: First of all, it must be in our public school system. That certainly is the place where the opportunity to smoke or to use marihuana is first present.

Senator Fergusson: Is that what you did? Did you start in the schools?

Mr. Horton: We do have an educational program in our schools, yes. We did not make it part of our statute *per se*. The State of Minnesota has before its judiciary committee similar legislation which would make drug education mandatory for all those who have violated the marihuana law. As part of their sentence—whatever it may be, criminal or civil—they must report to the drug education program. That may be an untimely type of program if it is used exclusively. It is like closing the barn door after the horse has bolted.

I favour some type of program in our educational facility similar to what our government did with respect to tobacco. The program would say, "Look, tobacco may be a socially acceptable practice, but it is addictive; it is harmful to you. If you want to smoke it, you should know of its harm. If you want to smoke it, fine."

As a government, we have an obligation to the citizenry at least to advise them of the information we can get through research, which would not be ordinarily available to them. So I say government ought to research about marihuana and tell the public the good and bad things about it and let the public decide.

Senator Fergusson: You say that you would like to set up a drug education program similar to the program you had on tobacco. How successful was the tobacco program?

Mr. Horton: Not very successful, I am afraid. People still want to smoke.

Senator Langlois: Mr. Chairman, I should like to ask the witness how widespread and intensive the education program he has referred to is, and how is it being carried out.

Mr. Horton: There is no formal statutory educational program *per se* in my state. As a matter of practice, our county health and state health departments, as well as our public school system, have implemented, internally, programs for drug education among students and the general population.

The Chairman: Thank you very much, Mr. Horton, for an interesting afternoon of testimony.

Mr. Horton: Thank you, Mr. Chairman. The pleasure was mine.

The Chairman: The committee stands adjourned until April 15 at 11 a.m.

The committee adjourned.

APPENDIX

Table prepared by Dr. Harold Halant

Probable Consequences of Different Social Policies on Cannabis

Type of Consequence	Strict Enforcement of Existing Law	Bill S-19	Possession as a Civil Offence	Legalization of Possession	Legal Sale by Government
A. LEGAL					
<u>Effects of criminalization</u>					
(a) numbers of sentences of all kinds	Intermediate	High	Highest (1)	Small	Very small
(b) numbers of prison sentences	Greatest	Small	Small	Minimal	Minimal
(c) effects of criminal record	Great	Greatest (1)	Small	Very small	Almost nil
<u>Enforceability and consistency of law</u>					
(a) clarity of definition of offences	Clear	Clear	Clear	Unclear (2)	Clear
(b) feasibility of gathering evidence	High	High	High	Very low (3)	Rarely arises (4)
(c) police morale (re ability to perform assigned function)	Intermediate (5)	High	High	Lowest (5)	Highest (5)
<u>Crimes related to illicit traffic (6)</u>	Infrequent	Infrequent	Infrequent	Uncertain (6)	Almost nil
<u>Monetary costs of law enforcement</u>					
(a) police, forensic labs, etc.	High	Highest	High	Intermediate cost, lowest yield (7)	Least
(b) judiciary	High	Highest (8)	High	Low	Negligible
B. SOCIAL					
<u>Respect for law</u>					
(a) conflict between law and social practice	Highest (9)	High	Intermediate	Low	Least

Type of Consequence	Strict Enforcement of Existing Law	Bill S-19	Possession as a Civil Offence	Legalization of Possession	Legal Sale by Government
B. SOCIAL (cont'd)					
(b) perceived fairness of application	Lowest	Intermediate	Higher	Uncertain (10)	Highest
(c) use of socially resented methods (e.g. provocation of offence)	High risk	High risk	Low risk	Potentially highest (11)	Least
<u>Disaffection related to</u>					
(a) infringement of personal freedom	Highest	High	Intermediate	Low	Least
(b) cannabis as a perceived threat to majority values	Low	Low	Intermediate	Intermediate	Highest
<u>Recreational pleasure (related to extent of use)</u>	Least	Low	Intermediate	High	Highest
<u>Impairment of work concentration and productivity</u>	Least	Low	Intermediate	High	Highest (12)
C. HEALTH					
<u>Total extent of use</u>	Slowest increase	Slow increase	Uncertain (13)	Intermediate	Highest (13)
<u>Incidence of physical harm from chronic heavy use</u>	Lowest	Low	Uncertain	Intermediate	Highest (13)
Motor vehicle accidents	Lowest	Low	Uncertain	Intermediate	Highest
<u>Emotional maturation and stability problems</u>	Low	Low	Uncertain	Intermediate	Highest
<u>Costs of drug-related health care</u>	Very low	Very low	Uncertain	Intermediate	Highest (12)

Type of Consequence	Strict Enforcement of Existing Law	Bill S-19	Possession as a Civil Offence	Legalization of Possession	Legal Sale by Government
D. ECONOMIC					
<u>Revenue to government</u>					
(a) loss through foreign purchase	Some loss (14)	Some	Greatest loss	Uncertain	None
(b) income through sale	None	None	None	None	Potentially very large
E. POLITICAL & INTERNATIONAL					
<u>Internal conflict (differences between provinces, cultural groups, etc.)</u>	High	High	Probably less	Uncertain	Possible elimination of problem (15)
<u>Problems with other countries</u>	None	None	None	Possible conflict (16)	Substantial (16) conflict

NOTES TO TABLE

- (1) Imposition of lighter penalties tends to result in more prosecutions and sentences. If possession were no longer a criminal offence, prison sentences and criminal records would relate only to trafficking and similar offences, and would probably be much lower in total number.
- (2) Under the Majority Recommendations of the LeDain Commission, there would be difficulty in deciding on the transition between legal sharing and trafficking.
- (3) Police find it extremely difficult to prove trafficking and therefore state that they must rely on charges of possession, or possession for the purposes of trafficking.
- (4) Presumably charges here would relate only to "bootlegging" etc., and probably would rarely arise.
- (5) Reference to police morale relates only to their ability to carry out their perceived responsibilities, not to their personal attitudes towards cannabis use. Current uncertainty as to the extent to which society expects them to enforce the law raises difficulties. Under legalization of possession but continued illegality of trafficking, importation or cultivation, there would be great difficulty in making a case and securing a conviction. Under conditions of legal sale and possession, the main police role would be in relation to bootlegging, and they would be largely relieved of an unpopular duty.
- (6) This refers not to the crime of illicit trafficking itself, but to possible incidental activities such as violence among competing dealers, extension of drug smuggling to other contraband, etc. Uncertainty about the situation under legalization of possession relates to the question of whether the bulk of cannabis used then would still be imported material, or would be grown locally on a small scale by the users.
- (7) In all probability, total costs will not change under any option, but there may be differences in the proportion of total law enforcement budget devoted to cases involving cannabis. Under the LeDain majority recommendation, effective prosecution for trafficking would require much more police effort per case. A possible outcome would be an increasingly permissive attitude on the part of the police.
- (8) While actual numbers of court appearances might be greatest under the option of civil penalties only, the legal and court costs per case would likely be substantially reduced.
- (9) Conflict is probably greatest under the present law because of sharp polarization of views for and against marijuana, for and

against use of the criminal law to control it, and of perceived inconsistency in the legal response to cannabis and to alcohol. The assumption underlying our predictions about conflict under other options is that the dilemma of disapproving the use of cannabis while also disapproving overly harsh punishment of users would be reduced. Legalization of sale is unlikely to be adopted unless there is a major change in public attitudes and a majority of citizens favour it, in which case conflict would automatically be least. Attempts to legalize sale now would probably provoke very great conflict.

- (10) How perceived will depend on how the recommended arbitrary right of seizure would be applied.
- (11) Under present circumstances "invasion of privacy" is a preliminary to intended arrest. Under the LeDain majority recommendation it could theoretically occur at any time, as it need be only for the purpose of confiscation. Trafficking might also be impossible to prove without the use of entrapment and related methods.
- (12) Actual numbers can not be estimated at present, and would change with level of use.
- (13) These predictions are made on the basis of the epidemiological model found to hold for alcohol consumption. The applicability to cannabis, though not yet as well substantiated, appears to hold. Under this model, with increasing degrees of liberalization of the law one expects progressively greater increases in the proportion of users among the whole population, and in the mean per capita consumption. Under legalization, one would expect the distribution of consumption among cannabis users to correspond to that of alcohol among drinkers. The uncertainty in relation to the effect of retention of civil penalties for possession arises from uncertainty about the deterrent effect of such penalties. This would depend upon the severity of the penalties and the strictness and uniformity with which they were applied. Moreover, illegal use by minors would be much more difficult to detect than that of alcohol.
- (14) Reference is to Canadian dollars lost to the economy through trips abroad specifically to purchase cannabis, and payment for cannabis to foreign dealers. Actual amounts are unknown, but estimates for marijuana alone imported into the U.S.A. from Mexico two years ago were of the order of \$22,000,000 per annum.
- (15) At present there are differences in attitude and extent of use among the provinces. If these grow more marked, problems may arise in relation to any proposal for major change in the criminal law. Some provinces may support major reduction in penalties while others may advocate retention of the status quo. In theory, legalization under the model of a liquor control act could permit wide latitude for individual provinces to

adopt policies in accord with the majority views of their own populations including, for example, total prohibition. In practice, however, considerable difficulty in preventing contraband across provincial boundaries might be encountered.

- (16) Although the LeDain Report indicates that the majority recommendation is technically compatible with international agreements, the substantial liberalization which it represents would differ significantly from the practices of most Western nations. The net effect of this cannot be estimated but some disadvantage in relations with such other countries might result. This would clearly be true in the event of legalization of sale.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**LEGAL AND
CONSTITUTIONAL AFFAIRS**

The Honourable H. CARL GOLDENBERG, *Chairman*

Issue No. 16

TUESDAY, APRIL 8, 1975

Complete Proceedings on Bill C-43 intituled:
"An Act to amend the Law Reform Commission Act"

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Walker—(20)

**Ex officio member*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 18, 1975:

The Order of the Day being read,
With leave of the Senate,
The Honourable Senator Benidickson, P.C., resumed the debate on the motion of the Honourable Senator Benidickson, P.C., seconded by the Honourable Senator Langlois, for the second reading of the Bill C-43, intituled: "An Act to amend the Law Reform Commission Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Langlois, that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, April 8, 1975

Pursuant to adjournment and notice the Standing Senate Committee on Legal and Constitutional Affairs met this day at 2:00 p.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Choquette, Croll, Fergusson, Laird, Neiman, Prowse, Quart and Robichaud. (9)

Present but not of the Committee: The Honourable Senator Stanbury.

In attendance: Mr. R. L. du Plessis, Department of Justice, Legal Adviser to the Committee.

The Committee proceeded to the examination of Bill C-43 intituled: "An Act to amend the Law Reform Commission Act".

The Committee heard the following witnesses:

Mr. Justice E. Patrick Hartt,
Chairman of the Law Reform Commission;

Mr. Justice Antonio Lamer,
Vice-Chairman of the Law Reform
Commission.

On Motion of the Honourable Senator Laird it was Resolved to report the said Bill without amendment.

At 2:55 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Tuesday, April 8, 1975

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-43, intituled: "An Act to amend the Law Reform Commission Act" has, in obedience to the order of reference of Tuesday, March 18, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

H. Carl Goldenberg,
Chairman.

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, April 8, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-43, to amend the Law Reform Commission Act, met this day at 2 p.m. to give consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, the bill before the committee today is Bill C-43, to amend the Law Reform Commission Act. Appearing before the committee in respect of this bill are Mr. Justice Patrick Hartt, Chairman of the Law Reform Commission, and Mr. Justice Lamer, Vice-Chairman of the Commission.

I will ask Mr. Justice Hartt to explain the bill to the committee, following which Mr. Justice Lamer is welcome to add any further comments he wishes.

The Honourable Mr. Justice E. P. Hartt, Chairman, Law Reform Commission: Thank you, Mr. Chairman. Bill C-43 is concerned with only one aspect of the Law Reform Commission Act, that being the constitution of the Commission itself. As it was originally set up, there were four full-time members and two part-time members. The theory behind that was that there would then be a continuing input from the bar, or at least from persons who were not full-time members of the Commission. The two part-time members of the Commission have made excellent contributions to the work of the Commission, but it was our recommendation to the minister that it would be better to have five full-time members and other mechanisms to provide a continuing input from the bar.

I discussed this with the president of the Canadian Bar Association prior to making the suggestion to the minister that the act be so changed, in the hope that the Canadian Bar Association could develop new ways of providing a continuous input into the work of the Commission. New methods are now in the process of being developed for this purpose.

The amendment deals solely with a numerical change, and is strictly based on attempt to cope with the tremendous amount of work that the Commission has undertaken. The four full-time commissioners work constantly on the projects under consideration, and the two part-time commissioners come in once a month or once every two months for a day or two. Under that arrangement, it was almost a question of starting afresh in reconsidering those matters which the full-time commissioners had exhaustively discussed.

From the point of view of expediency, we feel that there should be five full-time commissioners, along with, as I said, new mechanisms to provide a continuous relationship with the Canadian Bar Association.

The two part-time commissioners were practising members of the bar, one from Quebec and one from British Columbia.

I think that covers the proposed amendment, Mr. Chairman.

The Chairman: Thank you.

Senator Croll: Perhaps we should have some background as to how this evolved. First of all, there was the McRuer Commission.

The Chairman: That was an Ontario commission.

Mr. Justice Hartt: The Law Reform Commission was set up by act of Parliament. It is a full-time commission. We have been operating now for close to four years. We have published a series of working papers, and commencing this summer the reports will be forthcoming to the minister.

The Law Reform Commission works primarily in the fields of criminal law, administrative law and family law. I am not sure to what extent you wish me to go into the background.

Senator Croll: The McRuer Commission was an Ontario commission, whereas this is a federal commission?

Mr. Justice Hartt: That is right, senator.

Senator Croll: In the course of following these commissions, I have found that the McRuer Commission attracted much more attention from the media and from the people generally than is the case with the Law Reform Commission, of which you are chairman, which is conducting a deeper study on a much broader subject. I do not mean that as any reflection on you or the Law Reform Commission. I feel, in the main, that not enough attention has been given to the work done by your Commission.

Mr. Justice Hartt: We started at the very beginning with some basic premises that were worked out within the Commission itself. There are different ways in which you can approach law reform. As a commission, we had to develop our own program, which we did. We had to decide what areas were most important in terms of the scope of federal laws. To this end, we sent out approximately 6,000 tentative programs, giving them wide distribution, in the hope that we would get some type of response which would direct us to the areas of most concern to the public, thereby giving us our priorities. We were directed by those responses to the areas of family law, criminal law and administrative law. Those were the areas we then developed and have worked on since.

We have not received the response from the general public which we would have liked, but I am sure that both Mr. Justice Lamer and I were expecting too much. We have received an ever-enlarging response from many, many sectors of our society, such as medical groups, women's

groups, religious organizations, schools, and so forth. We are quite happy with the response we are getting from those areas, as well as with that which we are getting from the newspapers and the general public. It is certainly not as great as I would have hoped. There will be 15,000 copies of our most recent working paper distributed on request, and we find we are making an ever-increasing impact on the editorials, newspapers and other media.

Senator Robichaud: Copies go automatically to members of the Bar Association?

Mr. Justice Hartt: It does not go to every member; it goes only to members of the bar who specifically ask for it. However, we do have an arrangement with the national publication of the Canadian Bar Association, and everyone of our working papers is published in that, and also in the French language in Quebec, so there is no reason why every member of the legal profession and the bar should not be aware of our work.

Senator Croll: You were the first one who did any significant work, I think, on family courts and family law, yet I am a little surprised at the lack of attention that you are receiving, even from women's organizations, and generally from other people, for something that was of significance.

Mr. Justice Hartt: Perhaps I could ask Mr. Justice Lamer to answer that, because he is a little more familiar with it.

Mr. Justice A. Lamer, Vice-Chairman, Law Reform Commission: Perhaps one of the reasons why not too much is heard from women's groups is that they most probably agree with our paper on the family law court. We hear from people when they do not agree. When they do agree we just do not hear from them. There are exceptions to that, but usually it is the protester, and rightly so, who will make his views known.

The first of our papers on family law was on the unified family court. I think everybody agrees with that. It is more a question of modalities, and the modalities rest with the provinces as much as with the federal government, which perhaps is a question to be debated later on.

Our second paper is on family property. Again, I think the women's groups agree with what is contained in that paper. I believe the lack of response is merely a sort of, if I may use the French expression, "Qui ne dit mot consent." I would interpret it in that way.

Senator Choquette: The newspaper have simplified your recommendations or whatever remarks you made at this stage, and they made it so simple that I do not see why any woman would complain, because the way they put it was that the minute the marriage is broken up the wife gets half of everything the husband has. I do not think you intend to make it that simple, do you?

Mr. Justice Lamer: No, we did not make it that simple. I guess some papers oversimplified it, although, there again, other papers made it a little more complicated.

Senator Choquette: Without going into all the details, would it not be possible for a woman to ask the court to give her a certain share? I imagine she would have to prove the number of years she has lived with her husband and what contribution she has made. At this stage I do not expect you to go into all the particulars, but will there not

have to be a trial, or will it just be split right down the middle.

Mr. Justice Lamer: The judge will be given a sort of equity power to distribute the family property fairly. What you say is right; that is what the paper propounds.

The Chairman: If I might interrupt, I think that either Mr. Justice Lamer or Mr. Justice Hartt should explain what these papers are which recommend what you seem to suggest is a recommendation of the Law Reform Commission.

Senator Choquette: That is right.

The Chairman: Would you explain?

Mr. Justice Hartt: With respect to what we call a working paper on family property, we have two different types of document. One type is what we call a study paper; in other words, reports that were prepared for us and that we thought were significant enough to publish we have published as study papers. The family property paper was a working paper; it is a working paper of the commission, signed by the commissioners, containing their tentative recommendations, subject to the public response. We will analyze the public response, and will then make a report to the minister in terms of our recommendations, as well as an assessment of the response that we receive to those tentative propositions set out in the working paper. I might also say the general proposition set out in the paper was that, because of the role of the two partners in the marriage, all the property acquired during the course of the marriage was to be equally distributed at the end.

Senator Choquette: I would think so. It would be easy for any woman to say, "This man has got 50 houses of mine and in a year from now I will take half." That is the way the newspapers reported it. I realise you are not bound by them.

Mr. Justice Hartt: It is very difficult, because we do not have any control over how they report. As a matter of fact, we have gone to considerable lengths to try to assist the media. We have prepared little kits for the media in an attempt to summarize the documents in the hope that they will pick up the summaries we give them and put those into the newspapers, but that is not always done.

Senator Neiman: Today I happened to have lunch with the advisory group of the Council on the Status of Women. Contrary to Mr. Justice Lamer's assumption, to some extent, I found that some of these women do not know enough about their rights or the proposed changes in their rights to be able to make intelligent comments. I reminded them about the pamphlets that were available to them. The Ontario government, although they have not done the same thing, have published their large report. These women said they had been talking about this to some extent, but they are confused, and the more they talk about it the more confused they become. I want to suggest to Katie Cook that it would be well for a group such as the advisory council to get together with your commission, who could give them a good briefing on what the proposals are about. For instance, some of the women expressed great concern about the fact that they could be married in the province of Quebec under certain rules regarding the marriage contract, which might change if they moved to another province. They did not understand where provincial jurisdiction might overlap federal jurisdiction. I believe a great deal still has to be done to let women know

what is involved. These women will be your greatest ally in pressing for the changes you are recommending, but they must learn more and be a great deal better informed.

Senator Croll: Recently the Law Society of Upper Canada, of which I am a dues-paying member, made some provision for consumer representation. Do you have any thoughts in mind about non-lawyer representation on this commission?

Mr. Justice Hartt: I am 100 per cent in favour of that, and have said so on many occasions. We now have one member who is not a lawyer, Dr. Mohr, who is a social scientist and has been of tremendous benefit to the commission.

Senator Croll: Is there provision for this under the bill?

Mr. Justice Hartt: Yes, there is.

Senator Prowse: There is room for two.

Senator Croll: Is that your interpretation of the act?

Mr. Justice Hartt: As I read the act, it is two out of five.

Senator Croll: Except that the lawyers must have certain qualifications which the others do not.

Senator Prowse: Yes, except that they must be smart.

Senator Croll: No, but the others must have seven years at the bar.

Senator Robichaud: I believe I know the answer to the question I am about to ask, but I would like to have it on the record.

The Chairman: A good lawyer always knows the answers to the questions he asks.

Senator Robichaud: It has to do with the membership as provided in clause 2, the last paragraph, where it is provided they "shall be appointed from among the judges of the Superior Court of Quebec or members of the bar of that Province." I would like to have on the record the reasons why the province of Quebec is singled out here, as opposed to the other provinces of Canada?

Mr. Justice Hartt: Maybe I could explain it briefly, and Mr. Justice Lamer could add his comments. Under the Law Reform Commission Act we are to attempt to bring together and consider the concepts of both systems of law operating in this country, the common law and the civil law. Also, of course, we operate in both languages. To do that it is necessary, because of the use of the civil law in the province of Quebec, to have members on the commission from that province. The split decided upon in terms of this bill was three members from the common law provinces and two from the province of Quebec. Neither I nor the commission made any recommendations with regard to that. However, that is the reason, because there are the two systems of law operating here and the enabling statute specifically requires the commission to consider the concepts they are studying in terms of both those systems of law. Also, as is provided in the act, it is to endeavour to come to an eventual conclusion appropriate to the needs of a modern Canadian society.

The Chairman: It is a provision similar to that relating to appointments to the Supreme Court of Canada and is included for the same reason.

Senator Croll: But not the same percentage.

The Chairman: No.

Senator Laird: Is it possible that you might be missing out on something by not appointing part-time members? I realize the mechanical problem to which you refer and the fact that they are practising lawyers may remove a contribution from the practical end of society. Have you considered that in making this recommendation?

Mr. Justice Hartt: Yes, and I think you are quite right, senator, that the suggested amendment would cause the commission to give up the benefit of the members of the practising bar. It was a question of weighing the two in terms of the amount of work that we undertook in endeavouring to produce the reports in a reasonably expeditious manner that caused us to make this recommendation. However, certainly as far as I and Mr. Justice Lamer are concerned, we are giving up a real benefit in not having the assistance of members of the bar. Although Mr. Justice Lamer and I both practised in the courts for many years ourselves, that was some years ago and we may have got out of touch. We certainly are giving up something, senator; there is no question about it.

Senator Laird: In an attempt to sort of take up that slack, do you have any organized means of public relations so that you might perhaps create sufficient interest to obtain more voluntary contributions of opinion with respect to the context of your reports?

Mr. Justice Hartt: We have tried many methods, because right from the very beginning it was basic to the way in which Mr. Justice Lamer and I saw the commission that it must involve the public. It certainly was not a lawyers' body in which laws were to be imposed upon the public. We were both firmly of the opinion that it must come up from the public. We have tried many methods of involving the general public and specialized sections of that public. Some have been successful, some have not. For example, however, the manner in which we endeavour to do this with respect to the bar is that all our working papers and reports will be contained in the publications of the bar. The bar is now organizing meetings throughout the country to which we send the appropriate members of the commission and our research staff. Whatever comes out of those meetings is promulgated.

Senator Croll: I remember reading sadly that at the last meeting of the bar group in Ontario, when it came to the reform section, out of 1,400, all of 36 of the lawyers were there for the discussion. That was sad for a fellow who is away from the bar, but who has some affection for it.

Mr. Justice Lamer: I can add something to that. Amongst those who have given us a significant contribution I should mention that the psychiatrists of the country have done tremendous work on a voluntary basis for us in the field of mental disorders as they relate to criminal liability. Another group which I would not wish to see go unnoticed is the police forces throughout Canada. They have made tremendous and significant contributions in analyzing the documents, reacting to them and making certain facilities available, co-operating even in pilot projects.

Another point is that we always talk of the legal profession, but we sometimes may forget that others are involved in the administration of justice who are not lawyers or justices. These are the court clerks and stenographers. They have encroached upon their time even their leisure time, to help out in keeping statistics for us which they did

not have to keep. I would like to mention these groups maybe more than the bar.

Senator Robichaud: You said they volunteered their services, but were they requested or was it suggested to them that they make a contribution?

Mr. Justice Lamer: Yes, because these groups had never been used to being consulted, so they had to be invited and convinced that it was not simply tokenism. Once they realized that we were really as serious and interested in their opinions as to where the law should or might go and how it should be administered, their enthusiasm was very great.

However, one of the problems with which we were faced, not due to ourselves but the past which we sort of have inherited, was a certain degree of incredibility, that when we said we were interested in public contributions we were only paying lip service. However, when the public realized that we were really sincere, there was great co-operation. That is my experience so far as Montreal is concerned. With respect to Toronto, Mr. Justice Hartt can elaborate.

Senator Croll: To whose credibility are you referring?

Mr. Justice Lamer: Our credibility.

Senator Croll: The credibility of the Law Reform Commission?

Mr. Justice Lamer: Yes.

Senator Croll: I do not know you at all, sir—

The Chairman: I will vouch for him!

Senator Croll: —but I do know Mr. Justice Hartt and have known him for a great many years. After all, he is a man of considerable consequence and there is no question of his credibility within Ontario and among the members of the legal profession who know him. The chairman vouches for you. In your endeavour to achieve credibility among the public, should it have been necessary to do so with respect to lawyers in the case of people such as yourselves? It was the public you did not reach.

Mr. Justice Lamer: What can I say, except that what I meant was that when we started saying to the public generally that we were interested in their views as to where they thought the law should go, to a certain extent they were rather sceptical that we were really interested. I speak personally in that, not for Mr. Justice Hartt. I heard many people say, "Look, we will move right in and react to your documents, but who am I to tell you where the law should go?" People have been used to not being consulted. When we started consulting them, they were a little sceptical. To that extent, the commission's credibility, when it invited public reaction, was not cast in total doubt, but there was a little bit of scepticism involved.

I reiterate very clearly that when court clerks, people who are used to being at the lower scale of court administration, were consulted, they were a little sceptical. For instance, a clerk working in an office would be asked, "What do you think should be done to help improve the system?" He had never been asked that before on that basis and sometimes he looked as though he had not. However, once he realized that we were really asking him, and were interested not only in being seen to be asking him but interested in his answers and in what he had to say, the cooperation was very great.

Senator Choquette: Coming back to clause 7, it is not clear when the part-time members of the commission will terminate their functions, will be dismissed. Were they appointed for a specific period of time?

Mr. Justice Hartt: Yes. The term of one part-time member, Mr. McAlpine, from British Columbia, was over last Christmas. The term of Madam Joncas will be terminating, I believe, the end of May.

Senator Robichaud: Could we have the names of all the current members of the commission?

Mr. Justice Hartt: Currently there are four full-time members and one part-time member. The full-time members are Mr. Justice Lamer; Dr. Mohr, who is not a lawyer; Dr. G. Laforest from New Brunswick; and myself. The part-time member, Madam Joncas, is a practising member of the bar in Montreal.

Senator Stanbury: Mr. Chairman, I am not sure whether this question was asked before, because I was a little late in coming here. I wonder whether you feel that the amendments now being proposed will be of substantial help in overcoming the problem of getting public participation, or whether they are intended to provide you with greater manpower in dealing with the more academic aspects, the research and consideration functions of your commission.

Mr. Justice Hartt: I think it is the latter, senator, without question. It is a question of more manpower on a full-time basis to try to cope with the workload we have undertaken. I cannot put it on any other basis. That is really the sole basis. It is a question of having another body available all the time and being able to carry on edging the whole work forward on a continuing basis, rather than every month or every two months going back and having to start reconsidering it for the part-time members who do not have the benefit of the day-to-day consultations as have the full-time members. It is a practical, expedient basis.

Senator Stanbury: What troubles me is that I sense a little discouragement on the part of both of you in terms of the involvement of the public. I have agreed from the beginning with what you are trying to do and have looked forward to observing your experiences, as you can perhaps observe mine in some other aspects. I think we have been trying to do the same thing in different fields. I am concerned that we have both been discouraged a little too easily. A great deal of what Mr. Justice Lamer mentioned in his most recent remarks, about the framework within which we were trying to carry out these techniques, formed the basic resistance which we were up against. It will take some time to find the techniques and to move away from old attitudes.

If the amendments to the act are not really intended to overcome that problem—perhaps I should not be asking this question—I am wondering whether you have in fact still committed yourselves to the utmost in connection with the involvement of the public, and whether you are doing anything to beef up that side of the operation.

Mr. Justice Hartt: We are definitely committed to that completely, senator. It is not really fair to say that we are discouraged, although I have been reported in the press as saying that. Everything is relative, I suppose.

When I undertake anything, I expect a fantastic amount from myself and from those associated with me. I expect

everyone else to fall into line and put the same amount of energy into it. That is perhaps an unreasonable expectation. When I draw back and look at the situation more realistically, I think we have accomplished a fair amount in terms of public participation.

We have very extensive distribution of our documents, and I and Mr. Justice Lamer do a lot of travelling all across this country and attend different kinds of meetings, some legal and some not. Constantly I see people quoting from our documents, either directly or by reference. I find that a lot of things have become conventional wisdom, the accepted thing by people who are discussing it, through editorials, at meetings, or in the street. They are now becoming conventional wisdom, when three or four years ago, when we first put forward the ideas, they were considered anything but conventional wisdom.

I see that in terms of real law reform. After that is done, the legislation can be put in. When we try to impose legislation from on top without preparing the background, we are in for difficulty, because of the capacity of the criminal justice system to bend, as it were, with legislation, to accommodate itself to the terms of current legislation. If they do not want to go along with it, if they have not been consulted and do not understand it, the capacity to thwart it directly or in some other way is tremendous.

We find that if we go to the police, the public, court administrators, or to lawyers and say, "This is why we are doing this. This is why we are making this recommendation. These are the alternatives."—there is no use talking in idealistic terms—"We would like to do this or that. These are the realistic alternatives that are available to us in a democratic society. We are recommending this one, and this is why," we find that people are prepared to examine it, and make every effort to understand the reason why we are making the recommendation. When they see realistically what the other choices are, they are prepared to get behind it and try to make the legislation worth while.

Senator Choquette: Have you considered the divorce laws? Have you reached the point where you are going to suggest some changes to modernize that law?

Mr. Justice Hartt: We have a working paper on divorce in the final stages of preparation. I think it will be published in about two months' time. We have been working in the field of divorce and family law. The final report to the minister, which will be made next fall, will encompass our working papers on unified family courts, family property, maintenance, enforcement of maintenance, children, and divorce.

The Chairman: Do you tie in at all with the provincial commissions? Offhand I can think of four provinces—Ontario, Saskatchewan, Alberta, and British Columbia—which have law reform bodies. Do you tie in with them in any way?

Mr. Justice Hartt: Yes, we have quite close liaison with them. All the provinces now have law reform bodies and we meet formally once or twice a year; but certainly we have an informal relationship on a continuing basis. We have carried out some joint projects with other law reform commissions. Such projects are being carried out on a continuing basis.

The Chairman: Does that include the committee for the revision of the civil code under Paul Crepeau?

Mr. Justice Lamer: If I may, Mr. Chairman, in respect of Mr. Crepeau's group we proceeded in different ways. One of the ways in which we proceeded was to have under contract some of his people working on our projects and some of our people working along with his group.

The Chairman: I wanted to bring that out. I thought the committee should be aware of it.

Mr. Justice Lamer: In other areas, the B.C. Law Reform Commission is now working very intimately with our group on evidence. Every one of our papers, even our very preliminary papers, are sent to the B.C. group for comments and reaction. The Law Reform Commission of Manitoba is working with the federal Law Reform Commission in the area of content. We have joint projects in other areas as well.

The Chairman: Have these provincial commissions succeeded in obtaining more public interest or public participation than the federal Law Reform Commission? Some of them were set up prior to the federal commission being set up.

Mr. Justice Hartt: Yes, both in Alberta and in Ontario.

Senator Croll: I do not want you to misunderstand me, but was that not due to the fact that there was a personality involved? For example, if you want attention all you have to do is start talking about capital punishment. No matter which side you take, you are going to get it in the neck. What brought about the attention received by some of these provincial commissions?

Mr. Justice Hartt: You are now talking about the McRuer Commission, are you?

Senator Croll: Let us take the Alberta commission as an example.

Mr. Justice Hartt: The provincial commissions vary in their setup. The provincial commissions report either to the provincial Minister of Justice or the provincial Attorney General, whereas the federal Law Reform Commission reports through the Minister of Justice to Parliament, and all reports of the Commission must be tabled in Parliament. Therefore, we feel we have a much greater degree of independence in terms of our operations. The provincial commissions report through the respective Attorneys General who can then do what they wish with the reports. The federal Law Reform Commission reports to Parliament through the Minister of Justice, and within 15 days of the minister receiving a report, that report must be tabled unchanged, unaltered, in Parliament.

Senator Robichaud: Is it statutory that it be tabled in Parliament within 15 days?

Mr. Justice Hartt: Yes.

Senator Croll: Under those circumstances, it follows that reports of the federal Law Reform Commission would receive much more attention, would attract much more attention, than would reports of provincial commissions which may or may not be tabled in the provincial legislatures. There are at least 50 or 60 lawyers sitting in the House of Commons who should have been attracted to reports of your commission and spoken on such reports from time to time, but that has not happened.

Mr. Justice Hartt: The reason for that, senator, might well be that we have not yet made a final report. When our

final report comes out there might be some little reaction to some of the things we say.

There actually has been a tremendous amount of reaction and response. We have received wide coverage in editorials. A great many things are happening as a result of what we have said. For example, you may have seen the article in the Montreal newspapers of two or three weeks ago where a senior judge announced at a press conference that they were setting up new trial procedures for pre-trial matters in Montreal. They have tried it in a couple of courts and have had great success with it. Mr. Justice Lamer can perhaps tell you more about that.

In many areas across the country we are now seeing unified family courts being set up, such as in Saskatchewan and British Columbia. In many areas of the country there are divergence projects underway whereby people are being diverted out of the criminal justice system.

All these things, we feel, are practical effects of our recommendations that have been put forward in tentative ways. As I have said, what we are trying to do is to create amongst the general public, amongst professional organizations, an awareness of what we are doing, an appreciation of what we are trying to do. Hopefully, acceptable legislation will ensue from our work.

Senator Croll: I am having some difficulty in phrasing my next question, but what would you like to see in a bill such as the one we have before us that is not in it? What I am trying to get at, really, is what you asked for and what you got. That is fair discussion, I think.

Mr. Justice Hartt: The recommendation we put forward was simply with respect to the number of Commission members and their status, as to whether or not they were full-time or part-time. I will have been with the Commission five years next April, and Mr. Justice Lamer will have been with the Commission four years this coming Christmas, at which time his term will be ended.

Certainly, we would have some suggestions to make, after the years we have spent as members of the Commission, that are not covered in the present act, but the present act, in general, I think, is a good one. It provides the Commission with a good degree of independence, and yet it is answerable politically, which is the way it should be. The Commission is adequately funded. There is simply no justification for the Commission not doing significant work in the area of law reform.

At the moment, there really is not anything I want to add to the act, but there might well be when I give it some thought at the end of my term.

Senator Croll: Do you not intend to remain with the Commission?

Mr. Justice Hartt: No, my term will be up next April.

Senator Croll: It was a five-year term when you took the appointment?

Mr. Justice Hartt: That is right.

Senator Croll: So, it is your intention to return to the bench?

Mr. Justice Hartt: Well, I will be leaving the Law Reform Commission, anyway.

Senator Neiman: I do not want to prompt either Mr. Justice Hartt or Mr. Justice Lamer into making injudi-

cious statements, but I am wondering whether they might want to make some comments as to the way in which we, as parliamentarians, might be more effective in this area of law reform. Could we be doing a better job in this area?

Mr. Justice Hartt: Perhaps I can make one comment in that respect, senator, and then I will turn it over to Mr. Justice Lamer.

The Law Reform Commission would be delighted with any help that parliamentarians can give us at any time. Perhaps some of our working papers or any other aspect with which we are dealing can be put before this committee for examination and discussion. We are looking for any help we can get in these areas. We would be quite happy to appear before this committee to explain any of our papers and to get the comments of the committee. Also, there are specific areas which we run into all the time which we would like to investigate but, of course, we do not have the personnel to be able to cope with such investigations.

Senator Neiman: I am wondering whether it would not be helpful to have a meeting of this committee, or any other committee of the Senate or House of Commons, or perhaps a joint committee of both houses, to deal with the subject matter of any reports of the Commission tabled in Parliament. We could then have members of the Commission appear before the committee, at which time the committee could receive a briefing on the report. I think it is of utmost importance for all parliamentarians to become involved and to become aware of what your Commission is doing.

The Chairman: Senator Neiman, as you are aware, all members of Parliament receive copies of all the working papers of the Commission. I am afraid, however, that very few senators read those working papers.

Senator Neiman: That is my feeling, too, Mr. Chairman. That is why I feel we should get into this area. Parliamentarians are expected to go out and answer questions from their constituents regarding this whole area.

Mr. Justice Hartt: We would be prepared and delighted at any time to meet any group of the Senate who wished to listen to us so that we might try to explain our work. I guess it is a question of the time available. For example, this week there will be on your desks a report from a study we did in Toronto. In East York we tried to look at criminal justice from the street level. I did not have anything to do with the writing of it; it is only a study document, but it is extremely interesting. It is a different viewpoint entirely. Nobody has looked at the criminal justice system like this before. Everyone has concentrated on the court, on what happened in the trial court and the Court of Appeal. Here we are looking at what happens in the street, how the policeman, the victim and the public see the administration of justice, and also how the witnesses who have to come into court see it. I think it is a very interesting document, and we would certainly be more than pleased at any time to discuss that, or any other document.

Senator Choquette: Where are your headquarters? Are they here in Ottawa or in Toronto? Do the members travel?

Mr. Justice Hartt: The head office, under the enabling statute, must be in Ottawa. We have our offices, library and so on at 130 Albert Street in Ottawa. We also have an office under the direction of Mr. Justice Lamer in Montreal.

Senator Prowse: I am not sure if it is a high-flying commission or not, but clause 4, repealing section 8 of the act, says at the end that you shall be for various reasons employed:

... for the purposes of the *Government Employees Compensation Act* and any regulations made under section 7 of the *Aeronautics Act*.

This confuses me. Can anybody tell me what that means?

Mr. Justice Hartt: I am embarrassed with regard to that. I raised that myself.

The Chairman: Mr. du Plessis has section 7 of the *Aeronautics Act*. Perhaps he can read it to you.

Senator Prowse: Can you tell us how it applies to this?

Mr. R. L. du Plessis, Legal Adviser, Department of Justice: This is the standard section that goes into most acts that refer to employees of the Public Service of Canada. It says:

The Governor in Council may make regulations prescribing the compensation to be paid, the persons to whom, and the manner in which, such compensation shall be payable, for the death or injury resulting directly from a flight undertaken in the course of duty in the public service of Canada of any person employed in the public service of Canada, or employed under the direction of any department of the public service of Canada.

Senator Prowse: Thank you. It looked to me as though we had suddenly got a long way from home.

Senator Robichaud: I think this has been partly answered. I am one of those who have a tremendous amount of faith in the operation of this commission. Mr. Justice Hartt said a moment ago that his term of office is expiring some time this fall. Are you on leave of absence as a member of the bench?

Mr. Justice Hartt: Yes, I am on leave of absence from the Supreme Court of Ontario.

Senator Robichaud: I know any commission like this, or any similar organization, needs a spark plug. Are you giving any consideration to taking an extension of leave of absence?

Mr. Justice Hartt: No, I really am not, senator. It is my personal view that there should be a change over, certainly in the chairman, with new ideas brought into a commission of this kind. I really have not given any thought to that, and I would not; my family still lives in Toronto and I must get back to them.

Senator Robichaud: You have said that you have been travelling a lot to sell a bill of goods throughout Canada, which is extremely good. Would there be any merit in having a press conference today, if it could be arranged through the chairman, so that you could tell the world at large what you are doing?

Mr. Justice Hartt: We do have press conferences, although not formalized press conferences. Some of them have not been too successful, because that is not my business in terms of communication. We do try to relate to the media. Senator Croll was commenting on our lack of coverage, but I think the newspapers have been very kind to us. They have published our thoughts and ideas, and also criticized us, which is what we want on occasions; they have made suggestions. I think our newspaper and other media coverage has been quite good. But then, I do not purport to be an expert in this field. Maybe we should have one.

Senator Robichaud: The chairman is an expert in that field.

The Chairman: As a confirmed newspaper reader, I must say I was very much surprised by Senator Croll's underestimation of the response to the work of the commission. As far as I am concerned, the response has been very good.

Senator Neiman: Yes.

Senator Robichaud: It has been good.

The Chairman: This is something relatively new. As Mr. Justice Hartt said, the public has not been accustomed to being consulted about law reform. Something new is being tried. I certainly think the response has been very good. I have read some of the documents, and I personally congratulate the commission on the working papers that have been distributed.

Are there any further questions?

Senator Laird: I move that we report the bill.

The Chairman: Without amendment?

Hon. Senators: Yes.

The Chairman: The bill will be reported without amendment.

On behalf of the committee, I want to thank you, Mr. Justice Hartt, and mon ancien confrère, M. le juge Lamer.

The committee adjourned.



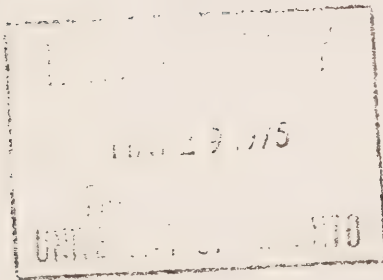
FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. CARL GOLDENBERG, *Chairman*



Issue No. 17

TUESDAY, APRIL 15, 1975

Eleventh Proceedings on Bill S-19, intituled:

**“An Act to amend the Food and Drugs Act, the Narcotic Control Act
and the Criminal Code”**

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable H. Carl Goldenberg, *Chairman*.

The Honourable Keith Laird, *Deputy Chairman*.

The Honourable Senators

Asselin	Lang
Buckwold	Langlois
Choquette	McGrand
Croll	McIlraith
Fergusson	Neiman
*Flynn	*Perrault
Godfrey	Prowse
Goldenberg	Quart
Hastings	Riel
Hayden	Robichaud
Laird	Walker-(20)

**Ex officio member*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 20, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Deschatelets, P.C., for the second reading of the Bill S-19, intituled: "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, April 15, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Legal and Constitutional Affairs met this day at 11:00 a.m.

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Fergusson, Laird, McGrand, McIlraith, Neiman, Prowse, Quart and Robichaud. (10)

Present but not of the Committee: The Honourable Senator Sullivan.

In attendance: Mr. R. L. du Plessis, Department of Justice, Legal Adviser to the Committee.

The Committee continued its examination of Bill S-19 intituled "An Act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code".

The following witnesses, representing the Addiction Research Foundation of Ontario, Durham Region, were heard in explanation of the Bill:

Mr. Wayne Weagle, Director;

Miss Melanie Laptuta.

At 12:40 p.m. the Committee adjourned until 2.00 p.m.

At 2.00 p.m. the Committee resumed.

Present: The Honourable Senators Goldenberg (*Chairman*), Croll, Fergusson, Laird, Langlois, McGrand, McIlraith, Neiman, Prowse and Robichaud. (10)

Present but not of the Committee: The Honourable Senators Greene and Sullivan.

In attendance: Mr. R. L. du Plessis, Department of Justice, Legal Adviser to the Committee.

The following witnesses representing the Association of Probation Officers were heard:

Mr. Lloyd de Walt, Director of the Association of Probation Officers, Winnipeg, Manitoba;

Mr. Ronald Nadeau, Chairman, Planning Committee and Director of the Association of Probation Officers, Fredericton, New Brunswick.

At 3.40 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard
Clerk of the Committee

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, April 15, 1975.

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill S-19, to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, met this day at 11 a.m. to give further consideration to the bill.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: The committee resumes its study this morning of Bill S-19 with two witnesses, Mr. Wayne Weagle, director of the Durham Region of the Addiction Research Foundation; and Miss Melanie Laptuta, who has done research for the foundation. You have a brief before you from Mr. Weagle in which he sets out his qualifications. I now ask Mr. Weagle to present the brief.

Mr. Wayne Weagle, Director, Durham Region, Addiction Research Foundation of Ontario: Thank you, Mr. Chairman.

Honourable senators, some weeks ago I received a call from Senator Neiman requesting that I present a brief to the Senate committee on cannabis legislation. My background is in social work, and I am presently employed as director of the Durham region office of the Addiction Research Foundation of Ontario. I am not a scientist, researcher or pharmacologist and so questioned Senator Neiman as to what type of contribution I was expected to make.

Senator Neiman explained that the foundation would be giving testimony at the research-scientist level in the person of Dr. Kalant, but that they were also desirous of having input from the "grass roots" or "front line" level. In addition, my office had just released the results of a survey and study on the use of licit and illicit drugs in Oshawa and that the findings gained from that exercise would be valuable to the committee, she explained.

I accepted Senator Neiman's request for three main reasons. First, I do believe that, because of the nature of my work, I have some knowledge and understanding regarding the use of marihuana that might be helpful to this committee in their deliberations. Secondly, I have formed some strong feelings, impressions and attitudes about the use of marihuana in our society. Thirdly, I welcome the opportunity of playing a small part in the development of our country's law. Those are my qualifications for being here today.

I hope, by means of this brief and the questions and answers that will follow, to accomplish two main goals. First, to pass on to this committee my thoughts regarding the proposed legislation; and, secondly, together with my co-presenter, Miss Melanie Laptuta, to offer some opinions, impressions, assumptions and findings regarding marihuana as a result of the type of work we do.

Last summer a survey was conducted on the use and abuse of drugs in Oshawa. This was a statistical survey. Coupled with that survey was a report that Melanie Laptuta carried out for the summer, and it was really to give some essence and words to the statistics that were gathered through the survey of high school students, community college students, and those employees in industry under the age of 27. I will not speak about Melanie's report now, because she will be doing that very well later on, but I wanted to give some overview or perspective to the two briefs. I am generally concerned about the trauma, the inequalities and the damage that our present laws regarding marihuana can inflict on our young citizens.

Today, the general populace seems to have a different attitude towards marihuana. A survey just released in the U.S. found that 39 per cent of the adults polled favoured elimination or reduction of criminal penalties for possession of small amounts of marihuana, and 40 per cent believe the laws should be tougher. The survey was conducted by the Drug Abuse Council, and I believe Dr. Bryant spoke to that when he was here. Today we see these "killer weed" stories as ludicrous and unfounded. In fact, organizations who today are advocating the legalization of marihuana quote, reprint, and circulate these stories to the public to demonstrate the insanity of the current marihuana laws. "Reefer Madness", an anti-marihuana propaganda film of the 1930's distributed by the National Organization for the Reform of Marihuana Laws, a Washington based lobby group dedicated to marihuana's decriminalization, is enjoying new fame today, only for entirely different reasons. Its showing is greeted with great peals of laughter among its predominantly marihuana smoking audiences.

Today we have very different feelings towards marihuana and those feelings have been formed because of two main reasons: 1) the growing acceptance and use of marihuana and, 2) findings of research. However, the latter is causing confusion. Different researchers are finding different things and people are saying, "Who really knows?" It is now getting down to a very basic practical observation in which people tend to be saying, "I have friends who smoke and I have seen no personality, physical or other changes in them... Therefore it must not be all that harmful." These are some of the comments one would get, in the clinical setting where I work, from people when you ask why they smoke marihuana. When you ask them to try to back it up with research findings, they give you the opposite research findings.

Marihuana use among both adolescents and young adults is increasing dramatically. It does not raise eyebrows anymore to hear of people in their late 20's or late 30's smoking marihuana at parties in Oshawa. It is receiving more acceptance every day. This was brought home to me rather hastily about two years ago as a result of an incident with the Oshawa media that I was involved in. I had been approached by a reporter from a local newspaper to give a

statement in reply to a comment made by former federal Health Minister, Judy LaMarsh, that marihuana might be legalized if all the adults who smoke it now were to admit it in public. The questioning then led to whether I believed marihuana was more harmful than alcohol. My reply was that from the evidence we have at the present one could say that alcohol was more harmful but... and then I qualified my statement. Of course, the next day the headline read, "Pot is less harmful than booze says A.R.F. Director". In the next two days I received four different calls from people in their 30's and one in his 40's who wanted to know if I was forming a group to advocate the legalization of marihuana because, if I was, they wanted to join, since they smoked pot regularly, had many friends their age who did, and wanted to do it legally. As well, it is not uncommon for my office to receive calls from even middle aged housewives who want to know what to do about their husbands who "smoked marihuana at a party last night." Marihuana is being smoked more, and more often, and more openly. It can be detected at shopping centres, walking past houses on a suburban street, and even on crowded buses. One could draw many similarities between the prohibition of marihuana today and the prohibition of alcohol during the early part of this century. It seems to be causing the same disregard for the law and encouraging the growth of a black market and all the problems inherent in that activity.

The survey of high school and community college students and those under the age of 27 in industry conducted last spring by the Durham Region office of the A.R.F. showed that since 1970 marihuana use has increased rapidly. The 1970 figures we used as our baseline data were from a national high school survey conducted by the Non-Medical Use of Drugs Directorate which showed at that time that 6.7 per cent of high school students had used marihuana within the previous six month period. In our survey of 1974, 29.1 per cent of high school students had used marihuana at least once, within the previous six months. In regard to hashish, 8.3 per cent had used it in 1970 within the previous six months, and in 1974 in our survey we found that 17.0 per cent had used it within the previous six months.

With regard to attitudes about the harmfulness of alcohol and marihuana, the 1970 national high school survey reported that 31.2 per cent stated that marihuana was much more, or more dangerous than alcohol, while 15.9 per cent felt that it or much less dangerous. In 1974, our survey showed that only 19.8 per cent felt that marihuana was much more or more dangerous than alcohol, and 29.6 per cent felt that it was less dangerous or much less dangerous than alcohol. So there was a definite shift in attitudes towards the harmfulness of marihuana compared to alcohol.

The Oshawa survey of 1974 also showed that the frequency of use of marihuana among high school students and industrial employees increased since 1970. For example, more industrial employees, nine per cent reported using marihuana on an average of more than once a week in the last six months than reported using it on an average of once a week to once a month in the previous six months, which was 6.4 per cent. The percentage was not as pronounced for high school students but overall there was more regular use over experimental use. It also showed that the older the marihuana smoker the chances were that he smoked marihuana more often.

As stated, our survey demonstrated that marihuana use has increased substantially since 1970. However, there is good evidence to indicate that we may have reached some sort of levelling off period and that future increases may not be as dramatic. Perhaps the holding pattern now is due to the legal restrictions against use of the drug, and that the percentage of individuals smoking it regularly now would be the percentage of people who would smoke it regardless of whatever law there was against its use. What we see in the percentage of people in our survey who use marihuana regularly is the percentage of people who will smoke it under the present restrictions; the percentage might fluctuate up and down but this may be the percentage we will have to accept as regular users of marihuana under the present situation. In other words, a certain percentage of the population under 26 years of age will not smoke marihuana for moral, legal, health or other reasons. However, when legal constraints are lessened, the percentage of users undoubtedly will rise and find a new level.

Is marihuana dangerous? No reputable researcher, scientist or marihuana expert will say that it does not have the potential for harm. Any mood modifying drug can be harmful. The question should not be "Is it dangerous?" but "How often?" Crossing a street is dangerous, driving a car is dangerous, eating food is dangerous as hundreds of people choke on food each year; exercise is dangerous to some people; giving birth is dangerous. Of course, marihuana is a dangerous drug. There is no drug, no chemical agent of any kind, no activity known, no phenomenon whatsoever, that is completely harmless.

There are many myths surrounding marihuana, and marihuana is not an innocuous drug. I know you have heard, testimony about marihuana causing chromosome damage, memory degeneration and brain damage and that it interferes with the body's immunity mechanisms, et cetera. But also we know that there have been findings to contradict those findings. Is it marihuana that causes these problems, or is it another drug, like alcohol or LSD, that the subject has used?

Sometimes I feel that the greatest damage is that inflicted by the laws we have to control marihuana use. The trauma, anxiety and inequalities caused by our laws regarding marihuana and the resultant criminal record could very well indeed inflict the harshest damage on impressionable, immature youth. Miss Laptuta will deal with a situation experienced by a young man who had been arrested five years ago for trafficking in marihuana and how that arrest has affected his chances for bettering himself.

One of the loudest objections to the softening of our marihuana laws is the widespread belief that marihuana leads to the use of harder drugs like heroin. This belief is so ingrained in our society that it is hard to dispel.

A sober, unemotional look at the facts will show that this belief is erroneous. Our survey indicated that up to 29 per cent of those surveyed had tried marihuana at least once in the preceding six months, but we picked up insignificant reports of heroin use, and the highest use of speed, which is a very damaging drug, was only 0.9 per cent within the previous six months. Also, although the use of marihuana in Oshawa has increased, in our opinion, the use of speed has decreased and heroin is virtually non-existent. Again, I am talking just about Oshawa. Clients of ours who claim they "will use anything" state that heroin is just not available on the streets of Oshawa most of the time. Thus, if marihuana leads to other drugs, why is the use of most

other illicit drugs decreasing—again, in the Oshawa area—while marihuana use is increasing?

It is true that there are many more heroin users known to the police now as compared to 10 years ago, but I personally believe that this is due mainly to increased police surveillance and knowledge about illicit drugs and a greater awareness of, and attention to the “drug scene” in the last few years by the police. It has been shown that the more police you put in an area the more crime you will find, because you have more crime detectors. The same holds true for heroin users. With more police, more aware of drugs and looking for users and sellers, more will be found. Chances are that they were there all the time, but had no reason to be sought out unless they committed another crime. Police have told me on a couple of occasions that most drugs are detected during car searches for some other infraction. Years ago, I am told by some of my clients, it was not uncommon for a policeman to pick up a bag of marihuana and not know what it was and consequently lay no charge. Today, with increased knowledge of drugs on the part of the police, and more police, more arrests are made.

The drug that nearly all chronic users of heroin started with was not marihuana. Marihuana is very rarely the first mood-modifying drug users experiment with. The first recreational drug is almost always nicotine or alcohol. For some reason that I cannot explain, people separate the licit and illicit drugs as to their potential for harm. Because a drug is legal it miraculously escapes any blame, and this is simply deceiving ourselves. Actually, it seems to me that the proponents of this argument are really arguing for marihuana legislation because, if you carry their line of reasoning further, the only way to stop marihuana from becoming a stepping stone to heroin is to legalize it. Then, suddenly, it achieves a new, safe, kind of status like the other legal drugs, alcohol and nicotine, and I suppose then LSD might become the new scapegoat.

It is true that marihuana is usually the first illicit drug that heroin users use, but there is nothing chemically in marihuana which “causes” or “potentiates” a person to go on to other drugs. What can happen is that he might become a part of a new subculture where other drugs are being used and become susceptible to using these other drugs because of new peer-group pressure, or because the use of drugs is satisfying some need that he has. But in the vast majority of cases even this new culture will not lead him to the use of heroin. In the first place, the reason a person who has decided to use illicit drugs starts off with marihuana—and, incidentally, I believe that the majority of illicit drug users never use any illicit drug other than marihuana—is because it is: (a) thought to be the least harmful; (b) most readily available on the streets; and (c) usually the least expensive.

To substantiate this, our Oshawa survey showed that those who reported never using alcohol tended not to use any drug. Also, although the vast majority of speed users had used marihuana, the vast majority of marihuana users, past or present, had never used speed. Speed users accounted for 0.9 per cent of the high school population, while marihuana users accounted for 29 per cent. Also, there were no high users of marihuana that had never used alcohol, and the vast majority of speed users had also used alcohol. Also our survey gave good indications that, other than for marihuana and hashish, the use of illicit drugs was decreasing. This has also been borne out by the Toronto school survey, carried out by the Addiction

Research Foundation, in 1974. Thus, the graduating theory proponents, it would seem to me, would have to admit from our survey results, anyway, that alcohol was the first mood-modifying drug used. In effect, the only thing that qualifies marihuana as the jumping-off point in the “graduation to heroin” theory is the very illegality of the drug itself.

Summing up, I must say that I do not envy the members of this committee in the task that confronts them. Although I personally do not favour legalization of marihuana, simply because society has enough crutches, I believe that the present law is too harsh and unfair, particularly to the youthful segment of our society. The damage done to a person because of his arrest and punishment is out of line with the offence committed. I would like to see no criminal record kept, and if a person cannot pay his fine perhaps he should be made to offer some service to the state, rather than go to jail, because this is a law for those with money or parents who will pay their fine for them.

Really the only deterrent to marihuana use that I can come up with relates to the chances of getting caught. If a person knew that if he smoked marihuana he or she had a 90 per cent chance of getting caught, I believe use would decrease rapidly. We have had experience with this with an impaired drivers' program that we put on at our office. This is for second offenders, who have probably driven while impaired numerous times before being caught even twice. Their reasons for drinking and driving, even though they know it is dangerous and they might be arrested, is that they have done it so often and have never been caught, why should they not do it once more type of thing? They admit that if they knew that every time they got into a car and drove while under the influence of alcohol there was a 90 per cent chance of their being caught, they probably would not do it. However, the only way this would come about would be if we had one police officer for every citizen, who would stay by his side all day. This is impossible, so we have to look at realities.

I thank you for this opportunity to address you, and wish you well in your deliberations.

The Chairman: I will now ask Miss Melanie Laptuta to present her brief, as it supplements that of Mr. Weagle. I will then call for questions.

Miss Melanie Laptuta, Researcher for Addiction Research Foundation of Ontario: Honourable senators, within this brief report I can only share with you my personal experiences and observations of marihuana users from a Participant Observation Study I conducted for the Addiction Research Foundation during the summer of 1974. Because of their personal nature, such observations are apt to vary with the individual perceiver.

The information brought forward is derived from observations and information obtained from the marihuana users I have interviewed and is relative to them only. In addition to the information I obtained from the participant observation study, I am basing my statements on my past experiences working with drug users in a peer group counselling relationship—in a social agency—and through doing drug crisis intervention work with them.

Since I was just recently asked to testify at this hearing, I was unable to interview users about the specific items that I was requested to speak about. I am thus limiting my discussion to my findings from my past study, which did not exclusively deal with marihuana use *per se*, but did

touch on marihuana use since it is a part of the illegal drug scene.

The primary objective of my participant observation study last year was to determine whether or not illegal drug use had increased or decreased in the city of Oshawa, Ontario, in 1974 as compared to 1971-1972.

A comparison of drug use was only part of the objectives of the research study. An additional major objective was to discover and examine drug use trends. By "drug use trends" is meant the change in: drugs of preference over the years; changes in drug transaction methods; in drug prices; and in purchasing areas. There was also a desire to compile an up-to-date profile on the modern-day drug user in Oshawa.

An overall objective was to obtain information about drug use that a user of drugs or ex-user would know most about. I frequented the streets, bars and other areas where drug users congregate to obtain this information. I asked these drug users about their experiences and life style, their attitude towards drug use, their reason for taking drugs, their reason for ceasing to take drugs if they ceased, the quantity of drugs taken and their pre-occupation after termination of drug taking.

One of the major observations from my study was that certain illegal drugs were more prevalent at certain times in Oshawa. LSD and other chemical hallucinogenic drugs were more prevalent when mass drug use began in Oshawa in 1967-69, while speed (methamphetamine) was more prevalent in 1970-72. Marihuana use, alcohol and PCP was more prevalent in 1973-74. Marihuana and hashish use seems to be rapidly increasing above all other illegal drugs.

The number of arrests for marihuana and hashish in 1973, and from January to July of 1974, in Oshawa confirms this. Out of 359 drug arrests by the Oshawa Police, 326 were marihuana and hashish arrests. Interestingly enough, people from various socioeconomic groups are choosing it as their drug of preference.

Most drug users I spoke to look at chemical hallucinogenic drugs and methamphetamine as being more harmful and more illegal than marihuana. In fact, they can see the validity of drugs other than marihuana and hashish being illegal. However, they classify marihuana in a different category and feel that marihuana use should not be a criminal offence.

In fact, when asked why they quit using drugs, drug users do not usually take marihuana into consideration. They mean they have ceased taking methamphetamine or chemical hallucinogens which they distinguish as "hard drugs." Alcohol and marihuana are looked upon as being relatively harmless and are viewed in the same light. On the other hand, some devoted marihuana users regard alcohol as being more dangerous because of its tendency to bring out one's violent nature and because of the damage incurred to one's liver. They maintain that since alcohol has been proven to be harmful and marihuana hasn't, then marihuana should be legalized also.

Nonetheless, it seems that the majority of users today engage in both alcohol and marihuana intoxication, unlike users of a couple of years back who kept mainly to one drug of preference.

Marihuana users do not feel they are doing anything against society which they should be punished for. Likewise marihuana traffickers do not believe they are committing a wrongdoing. They maintain they are selling to

people who want to buy. I see a distinction here between drug dealing of today and past years.

In the past, drug dealing took on the appearance of a crusade. One illustration of this is the perception held by people of dealers dropping pills into innocent individuals' drinks. This was more characteristic of the earlier days of mass drug use. Because of this crusading attitude, the name for one who sold illicit drugs evolved into the name "pusher". He felt compelled to "turn others on".

This is not necessarily the concern of drug dealers today. They simply supply drugs to people who wish to buy. Persuasion techniques are seldom employed. If a person wishes to purchase, in most cases the onus is on him more or less to locate the drugs of his choice. And in the case of marihuana smokers, the same situation exists. Today, if one is in the company of marihuana smokers and does not feel like smoking, he is not pressured by the others to smoke and is not ridiculed by them; unlike the situation about four years ago, when there existed strong group pressure to smoke if others were doing so.

Marihuana is readily available on the streets, in bars, restaurants, and shopping centres. One would not have much difficulty in obtaining some.

There is a considerably greater risk involved today in marihuana use as there is more of a chance of being arrested. Law enforcers are better trained and know what to look for. Consequently the number of arrests are increasing.

Yesterday one purchased \$5 or \$10 worth at a time from an amateurish trafficker who usually was an acquaintance or friend. In 1974 the large number of amateurish dealers of four years ago have been replaced by a smaller number of "big dealers." These "big dealers" tend to be older, more mysterious, and are not interested in small drug transactions. Many people today who smoke marihuana regularly buy in quantity, as it is cheaper, thus opening themselves up to trafficking charges. They usually buy one ounce to a quarter of a pound and often split the costs with a friend.

Among certain circles, smoking marihuana has become so accepted and a part of the mores that the illegality seems to diminish from their purview. They do not consider the possible consequences of illegal possession. In addition, the sentence passed down for the first offence appears to be relatively relaxed in regard to marihuana. There are numerous arrests, but the fines and possible jail term do not seem to be that severe to them. However, after being arrested, this attitude seems to change. They begin to realize the effects and consequences of a criminal record, which they did not consider before. Most of the marihuana users I spoke to, who had never been arrested, did not realize the implications of a criminal record. Somehow they deluded themselves into thinking only of the fine and possible jail sentence. Those who had been arrested, however, found themselves branded as criminals, which is extremely alien to their concept of themselves. After one has been arrested, gone through court, possibly to jail, and through all the accompanying rituals of becoming a criminal, a youth's concept of himself is shaken.

Adolescence is filled with enough problems of a search for identity, and when an already insecure immature youth is subjected to confrontation with police, lawyers, jail attendants, parents, and a number of other people, who imply that by his act of marihuana use he is a worthless delinquent, he begins to believe that he is. He may very well take on this label and play the role assigned to him. After

this psychologically upsetting experience, how is it possible for a youth to gather enough belief and confidence in himself to set a goal, to strive to succeed? How can he grow to be a stronger, more secure person? For him the legal process reinforces his already existing apathetic, negative attitude. For many, a marihuana arrest does not stop them from smoking marihuana. After all, they already have the criminal record. What can be worse? What is to stop a convicted marihuana user from committing other criminal offences? What hope do they have for progress in life? The damage has already been done. They have a criminal record as an albatross around their necks.

A marihuana charge puts limits on the types of jobs that are available, prevents vertical mobility and largely determines a person's future. For instance, let me relate one such situation that I am quite familiar with. An acquaintance of mine was charged with trafficking when he was 17 years of age. As he grew older, however, he matured and changed his life style considerably and stayed out of trouble. Now, at the age of 22, he is a very hard worker. He has been holding two jobs, both involving driving a delivery vehicle. When he decided that he would like to obtain a job as a taxi driver, he applied for the taxi driver licence and was refused because of his marihuana record. The city counsellors pointed to him as a criminal whom they feared for their children's safety if in his service. They claimed that he might use the taxi for illegal purposes. This was quite an over-amplification. For one thing, he had proven that he was a responsible driver as his job at the time also involved driving. In addition, when his employer found out about his criminal record he was fired.

Also, when filling out job applications he was asked whether or not he had a criminal record. He felt compelled to write down that he had, as he felt that the employers could enquire and obtain that information if they had suspicions. A number of employers held this information, that he truthfully gave, against him, without considering further his merits as an individual.

He wanted to move to Florida and begin a new way of life, only to find out that he was refused a visa. So, you see, the present law really handicaps a person in his or her future. It maps out a person's future and denies that person the right to start anew. In addition, this incident received a lot of publicity in the local media, causing embarrassment. This is not an isolated event. I can relate similar situations experienced by friends and clients of mine.

I have observed a lethargic, apathetic attitude in people who are chronic smokers of marihuana. Many do not seem to be very motivated and do not have a desire to accomplish things that our society deems important and revolves around. I feel that it is difficult to determine whether this attitude is a result of the lifestyle that they have chosen for themselves or the effect of chronic smoking.

My observation is that a number of people who get involved in chronic marihuana smoking have often been previously involved in the abuse of some chemical hallucinogen or speed. It seems that over-indulgence has become so much a part of their orientation that it is difficult for them to put restraints on anything they do. After ceasing to take speed, these ex-speed users either over-indulge in marihuana or alcohol, or both. I feel that chronic smokers are not satisfied with enough smoke to make them just feel good; they continue to smoke until they have totally lost contact with what is happening around them.

Senator Croll: Perhaps you could read that again for the benefit of the chairman and some others around here.

The Chairman: Senator Croll does not like my pipe!

Miss Laptuta: They usually smoke a number of times a day, usually every day, although this varies with the individual. Other people who use marihuana with more self control can use it regularly or occasionally, without getting involved in chronic use. Like alcohol abuse, it seems to hinge on the personality of the individual, in addition to other factors.

Quite often, marihuana smoking is part of a phase that many go through. Many who are not really that interested in marihuana stop using it and turn to more legalized means of intoxication as they mature in age.

In such a society as ours, marihuana use and other drug use is inevitable. We are raised with an outer directed orientation. We do not learn to turn within and towards ourselves for our strength. We believe that all this is outside oneself.

Marihuana is just another of these external artificial substances we turn to. However, users of marihuana are punished for turning to that substance instead of other forms of intoxication, as it is not sanctioned by our laws. Our present laws are creating a new class of criminals who have no choice but to go the path that has been paved for them with this label they have been given.

The Chairman: Thank you, Miss Laptuta. Senator McGrand will lead off the questioning. You may address your questions either to Miss Laptuta or to Mr. Weagle.

Senator McGrand: This survey was carried in Oshawa. How many people did you interview in conducting it?

Mr. Weagle: There were about 5,000 people interviewed altogether, the largest percentage being high school students.

Senator McGrand: And what percentage of the population of Oshawa did the survey cover?

Mr. Weagle: The population of Oshawa is around 100,000, so about 5 per cent.

Senator McGrand: And these were mostly young people?

Mr. Weagle: Under 27 years of age, yes.

Senator McGrand: And what percentage of the young people of Oshawa would that represent?

Senator Prowse: Probably about 25 per cent.

Senator McGrand: We have had a number of well qualified witnesses appear before this committee who are convinced, as a result of extensive research, that marihuana is a dangerous drug. Do you think that if marihuana was legalized it would replace the more dangerous drugs as a mood modifying agent?

Mr. Weagle: Is your question whether marihuana would replace alcohol—

Senator McGrand: Leaving alcohol aside, would it replace such drugs as speed, LSD, and so forth, as a mood modifying agent?

Mr. Weagle: If it were legalized, senator, I think the number of people using it would increase rather drastically

and, of course, it would be more widely used than LSD or the other illicit drugs. One can draw the same corollary with alcohol use.

Senator McGrand: It is your opinion that marihuana, if legalized, would take the place of these other mood modifying drugs—or, at least, that is the impression I got. Have you any idea as to why marihuana would take precedence over these other drugs?

Mr. Weagle: I can only give you the reasons that users give to me when comparing marihuana use with the use of alcohol, and they are such things as the absence of a hangover and the fact that while it is illegal there is more of a kick to smoking it. In addition, there is peer group pressure, or as a means of rebellion, or striving to identify oneself, and that sort of thing.

Senator Prowse: I follow what you say, that if we make it legal more people will use it. Would it be your opinion that by making it more easily available people who are now taking heroin, LSD and speed would give them up for marihuana? Surely not?

Mr. Weagle: Maybe Melanie would be able to answer that. We were talking about this very thing only yesterday.

Miss Laptuta: I could only answer from my personal experiences. It is my belief that certain people, because of their personalities and their deficiency needs, are attracted to certain drugs rather than other drugs. Certain people are attracted to hallucinogenic drugs, other are attracted to speed, heroin and drugs of that sort, while another type of personality is attracted to marihuana.

Senator Prowse: If marihuana were made available and there were no sanctions against its use, I would expect there to be a tendency for more people to use it for the simple reason that there would be no risk involved.

Mr. Weagle: Legal risk.

Senator Prowse: I would find it difficult to believe, from what I know and have heard about the other drugs—LSD is a strange kind of thing, and I do not know whether we can use it as an example—you could get off heroin by going on to marihuana. I am sure you would have withdrawal symptoms, even going to marihuana. Would you know that? Could you answer that question? That would be my feeling.

Mr. Weagle: Yes, there would be withdrawal symptoms in going off heroin, if that is your question. I think what Melanie was getting at was that certain people have a preference for a certain drug.

Senator Prowse: For a certain type of drug.

Mr. Weagle: For a certain type of drug. There have been many studies, which I do not have here, but I can perhaps quote from them. A docile person, somebody who had very aggressive parents but who had been rather withdrawn, might be attracted to speed simply because of its aggressive qualities and things like that, whereas someone else might be attracted to heroin or alcohol. As Melanie says, it depends on the personality and make-up of the individual, and what innate or inward needs that person has to satisfy.

Miss Laptuta: Yes, I think a great extent of it has to do with availability. Heroin is just not available in Oshawa.

Senator Prowse: So they do not have it if they cannot get it.

Mr. Weagle: They go to Toronto.

Miss Laptuta: If they really wanted it they could probably go elsewhere to find it, but I do not think a heroin user would switch.

Senator Prowse: With respect to alcohol, figures have been published that I would be prepared to accept as probably correct; we keep reading them. We read that of so many users a certain percentage, maybe 5 per cent, tend to be abusers of it and find themselves in trouble with it. I would imagine the same thing would apply to any type of drug.

Senator Sullivan: That is right.

Senator Prowse: The type of person who gets on to heroin is the type of person who, if on alcohol, would be in trouble on alcohol, and if he got on to marihuana he would probably get in trouble on that too.

Senator Sullivan: That is right.

Senator Prowse: Would that be generally correct?

Mr. Weagle: Yes, I would agree. I personally believe that there are addiction-prone people who will get hooked on anything, whatever is available, in order to try to cope with the stresses of life and smooth out the bumps of life.

Senator Croll: What has been the experience of other countries that have, in effect, legalized marihuana? What has happened there? I think Sweden, and to some extent Britain, have done that. Have you looked into that at all?

Mr. Weagle: I have not looked into it that much; I have read about it.

Senator Sullivan: Not Britain.

Mr. Weagle: It is not my area of expertise. Probably somebody like Dr. Kalant would have been a better person to answer that.

Senator Croll: I cannot understand why Durham County would have an Addiction Research Foundation. I have known Durham County for a long time. Can you tell us the answer? What is the problem there?

Mr. Weagle: The same problem that exists everywhere, I guess, with alcohol and drugs.

Senator Croll: Alcohol was the beginning?

Mr. Weagle: We were originally asked to go into it in 1969 or 1970, when they asked the Addiction Research Foundation to set up a treatment unit there. This was done by segments of the community. At that time we were not able to do so financially, so they set up a small community office, where our main thrust is community development and organization, to get treatment facilities made available and work with the community. Originally it was in response to the alcohol problem but at that time we were at the height of the drug panic and it was really more in response to that, I would say; people were saying, "we need something here to help alleviate the drug situation."

Senator Croll: Did the provincial government give grants, did they assist?

Mr. Weagle: The Addiction Research Foundation is operated by an annual grant from the provincial government.

Senator Croll: So this is a joint effort?

Mr. Weagle: This is a community office of the Addiction Research Foundation.

Senator Croll: Of the foundation?

Mr. Weagle: The Durham regional office, yes. We have there 225,000 people with all the problems that 225,000 people can have.

Senator Prowse: This was just a typical community, as far as you were concerned?

Mr. Weagle: For the study itself?

Senator Prowse: For the study itself.

Mr. Weagle: Yes. It was something we always wanted to do, a survey on the incidence of drug abuse in the Oshawa area, because a lot of people had asked for this sort of survey. Last year a lot of things came together so that we were able to do this, and the findings were helpful to us in working with schools, industry and that sort of thing.

Senator Croll: How do you justify asking us to treat these people, who get themselves into difficulty, differently from people who under other circumstances get into similar sorts of difficulty and also wind up with police records? Why should we?

Mr. Weagle: Why should we treat these people differently?

Senator Croll: Yes. We are trying to find out. Can you help us?

Senator Prowse: Maybe we should treat them all differently.

Mr. Weagle: As The Mikado said, "to make the punishment fit the crime." I think that people who break the law have to have some kind of punishment. I just feel that the criminal record a person gets for smoking marihuana, maybe the first time he has done so when experimenting with it, is unjustified. When you look at the type of person an adolescent is, who will do things impulsively, who will do things under peer group pressure, but will on reaching the age of 21 or 22 regret that he did it—it could be anything from speeding in a car to taking drugs—I think those sorts of things have to be taken into consideration from a layman's point of view.

Senator Croll: All of us here are struggling to find out how we can avoid giving these young men and women a record. We know what it means; we have known about it for a long time, and Miss Laptuta covered it very well today. Over the course of time I have known young people who were caught gambling in a small way, or doing something of that sort; there is a record there. One meets them now and again going to Florida, California or some other place, or under other circumstances. Why do we take all this time in trying to be particularly helpful in this case? I am just wondering what views you have on that.

Mr. Weagle: It again boils down to my feelings about the rashness or impulsiveness of youth, which throughout the ages has never changed. At that age we get involved with things that we regret later on. I also think that marihuana laws do single out young people. I can cite numbers of people in their thirties and forties who smoke marihuana but never get arrested because the police are not necessarily looking for them. Most of the arrests occur after the police have stopped a car for some other infraction, or because the occupants look suspicious. If I am driving

along the road I do not look suspicious, but maybe a youth with long hair who has a rattley old car might look suspicious and be stopped. I feel that in some ways those are unfair laws.

Once I asked a police officer in our area what he did when he stopped a driver who was obviously impaired—did he let him go, did he drive him home, or did he make an automatic charge? He said, "Many times we will take him home; we will not let him drive but we will take him home." I asked, "What if you stopped a car with a young person in it and there was a marihuana cigarette found in it; he was not using it but it was found in his car?" He said that that was an automatic charge, that they never let him go. That was one policeman, and I think he was speaking for the attitude of that police force. I feel that is not the proper use of our judicial system or our laws.

Senator Laird: Senator Croll has started exactly the line of questioning that I wanted to take with you. You do understand that we are not here engaged in an academic exercise; we have a bill before us, S-19. The principal thing that bill is doing is lessening the penalty for mere possession of a small amount. As nearly as I can figure out, you agree with the bill. I presume you are acquainted with it?

Mr. Weagle: Yes, I am.

Senator Laird: You agree with the bill but in effect you are differing only in one respect, namely, you would not like to have a conviction for mere possession, no matter when. Is that a fair estimate of your presentation, Mr. Weagle?

Mr. Weagle: Yes, that is very fair.

Senator Laird: The former Solicitor General may have something to say about this later. We have had it suggested here by other witnesses that after a conviction, at the end of a stated period, say one or two years, if there has been no misbehaviour in the meantime, there be an automatic pardon. What would you think of a proposition like that?

Mr. Weagle: Bring me back on track if I do not answer that question, Senator. It has been my experience with young people that they are not even aware that there is a criminal record when you get caught for marihuana possession, until they get caught and then find out. I wonder, also, once they do know, how many people would go to the effort of getting that erased, because they have not yet had that experience.

Senator Laird: I am suggesting that the proposal to us was to have it an automatic pardon, without application.

Mr. Weagle: What purpose would that serve, then?

Senator Laird: To wipe the record clean.

Mr. Weagle: Only just to have it for two years?

Senator Laird: Let us take two years. If in the meantime the person convicted did not resume the use of marihuana, then automatically he would be pardoned.

Mr. Weagle: The problem there—and I am not of the legal profession—is that it would be hard to determine whether or not he had indeed used marihuana.

Senator Laird: You have just hit the nail on the head, and that is why I was more or less pressing you on this. Let me go to another possibility. It has also been suggested to us that part of a sentence for conviction for mere posses-

sion should be the taking of a compulsory course on the harmful effects of marihuana, somewhat as some provinces do in the case of traffic offences. What would you think of that?

Mr. Weagle: I think it would work with some people. I do not know what percentage it would work with. People get education in the schools about marihuana use. I was thinking about this yesterday. Every facet of the whole marihuana issue is open to the personal bias of the educator, the researcher, the legislator—and the parent, I suppose. One office of some school or foundation or alcoholic drug treatment centre might offer a course that would be wishy-washy about the harmfulness of marihuana, whereas, another would be totally hard line. Unless there could be some uniformity or presentation made, I think it would be difficult to get the results. It would have to be researched, I suppose, as to the type of education. I have read where they performed research to demonstrate that education on drugs in schools encourages drug use. Whether or not that is true, I am not prepared to say. I continue to educate about drugs in our school system and try to do it responsibly. It is open to many variables. Whether that would work or not, I could not really say. It might. I would tend to think it might not. It might help some, but regarding the people it would help, probably the conviction did the trick. For example, a lot of people will not repeat an offence, simply because of the conviction. Those are probably the same people who would change with an education program, but you have already got them by convicting them.

Senator Laird: Incidentally, somewhat along those lines, the Le Dain Commission—and you apparently agree with them—indicated that excessive use of alcohol has caused far more misery than excessive use of marihuana. But, in fairness, is not that due to the fact that there is a greater consumption of alcohol by a lot more people?

Mr. Weagle: It probably is. Undoubtedly it is. There are more people. But the thing to look at is that most people can use alcohol and do not have too many problems. At one end of the spectrum you may have 5 or 10 per cent who do become problem drinkers or who do get into trouble because of the use of alcohol. I believe the same holds true in regard to marihuana smokers, based on our knowledge to date, that the vast majority of marihuana smokers probably do not have much difficulty with it. At one end of the spectrum you have, I guess "pot" users, for want of a better word, who continue to use marihuana day in and day out and cannot cope with life without having it. That is wilful abuse of marihuana. But regarding the once or twice a week user, the social smoker, I guess, whether or not he has a problem I really could not say. He has a problem legally, but whether he has a problem physically, mentally or emotionally, I could not say. I have not seen it. The people I get are people who have used drugs, all sorts of drugs: it could be tranquilizers; it could be barbiturates; it could be alcohol; it could be marihuana or LSD. They are addiction-prone people.

Senator Sullivan: May I put a supplementary to you on Senator Laird's question and for your benefit? I speak as a physician. You can continue using alcohol for a long period of time before there are serious physiological changes in the human body. You cannot do that with marihuana.

Senator Laird: You would agree with that, I presume, although you are no expert on the subject. The evidence is

very clear on that. I will ask one more question and then give way to somebody else.

The Chairman: Mr. Weagle wanted to say something in answer to Senator Sullivan.

Mr. Weagle: I really wanted to ask what the short-term effects are.

Senator Sullivan: I have been closely associated with people in this field, such as the man you differed with a little, Professor Kalant.

Senator Laird: I have one more question. Probably Miss Laptuta would like to get in on the answer to this. Both of you feel that the personality problem is probably the biggest problem in the abuse of marihuana. How in heaven's name are we ever going to handle that situation effectively?

Senator Prowse: You spoke of personality.

Senator Croll: Are we not up against this, that we know what alcohol is like and we have used it, and not one of us knows what marihuana is all about and so we have to play it the best way we can.

Mr. Weagle: I do not really know how valid my answer would be. To deal with the makeup of the individual, the personality of the individual, calls for quality-of-life issues and calls for better family environment. That question is very difficult to answer, how to deal with the personality of the user.

Senator Croll: I realize that.

The Chairman: Senator Laird, when you asked Mr. Weagle how he disagreed with the provisions of the bill, you referred to the criminal record aspect. I should point out that according to his brief he objects to imprisonment in default of payment of a fine.

Senator Laird: Thank you.

Senator Robichaud: Mr. Weagle, you mentioned that you could detect marihuana users on the street or in schools and on buses. What is your method of detecting these people?

Mr. Weagle: I was referring to smelling the marihuana.

Senator Robichaud: If someone had smoked marihuana just prior to coming to this meeting, could you detect that person?

Mr. Weagle: Probably not. I might be able to detect the aroma if it was still here.

Senator Robichaud: Could a school teacher detect a marihuana user before the opening of the class?

Mr. Weagle: Are you going into the area of physical symptoms now?

Senator Robichaud: Or the mental attitude of the person, if the teacher knows the person quite well.

Mr. Weagle: It would be extremely difficult. There have been occasions when I have talked to kids who have come in to see me and afterwards they admitted, "I just had a joint before I came in here."

Senator Robichaud: They had to tell you?

Mr. Weagle: That is right. But in other cases I could detect it because they had had quite a quantity of it and they were out of touch and I could tell.

Senator Sullivan: It depends on the quantity.

Mr. Weagle: With some people I suppose it does.

Senator Robichaud: It is the same with alcohol. If a drunk were to come in here you would certainly know that the person was drunk, even if you did not know the person. Does it work the same way with marihuana?

Mr. Weagle: Yes. You could have one beer and I would not notice it unless I could smell your breath. If you had a number, I would notice.

Miss Laptuta: I really do not think you can notice it unless you are prepared to go witch-hunting and look into people's eyes and observe their behaviour closely. And then I do not feel that you can really tell whether it is marihuana, tranquilizers or simply that the person is a placid type.

Senator Robichaud: You have done a terrific job surveying the situation in your particular area. You have interviewed quite a number of users. How did you know that they were users?

Miss Laptuta: When the drug situation was particularly high in Oshawa about four years ago I started a drug crisis centre. I eventually became its director. Last summer I interviewed many people I had come into contact with years ago. Many of the people I interviewed were names I had obtained from different social agencies which deal with drug users. A number of the others were personal acquaintances.

Senator Robichaud: Are users reluctant to answer questions?

Miss Laptuta: I would repeat that I did not deal specifically with marihuana users. I concentrated on hallucinogenics, speed and anything, really.

Senator Robichaud: But are they reluctant to answer questions?

Miss Laptuta: It depends on how I approach them, on how I say I obtained their names and what type of contact they are. I would say that marihuana users are not as reluctant as speed users, whose first concern is where you obtained their names. They want to know if you are related to the RCMP in some way. Marihuana users are not so paranoid.

Senator Robichaud: They do not boast about it, but they are not ashamed of it—is that it?

Miss Laptuta: No, they are not ashamed of it because it is accepted among adolescents that it is no big thing; it is just like smoking a cigarette.

Senator Robichaud: You stated in your brief that many people consume alcohol and use marihuana. Do they do so at the same time, or is it a question of sobering up from alcohol and then going on to marihuana?

Miss Laptuta: It is done at the same time.

Senator Robichaud: That must have a terrible effect.

Miss Laptuta: Many users combine various types of drugs at the same time, often even including prescription drugs.

Senator Robichaud: Surely it must be the minority who use both at the same time.

Miss Laptuta: It is difficult to say whether it is the majority or the minority, because I never took statistics.

Senator Sullivan: It would be the majority, I think.

Miss Laptuta: It is nothing unusual.

Senator Neiman: You were talking about the combination of marihuana and alcohol being taken together.

Miss Laptuta: Yes.

Senator Neiman: Would marihuana usually be smoked by nicotine users or would people who do not normally smoke cigarettes also try marihuana? If so, would they be just as heavy users?

Miss Laptuta: I do not think there is a real distinction there, although some people may not like to have smoke in their lungs and would therefore not be attracted to marihuana.

Senator Neiman: But would a person who would not normally smoke cigarettes also be a type who would smoke marihuana?

Miss Laptuta: I suppose they would smoke it, yes.

Senator Neiman: Can you better describe a typical drug user, especially with respect to marihuana users? Is there an identifiable type among high school students or people in industry? In other words, is there a certain type of people more inclined to use marihuana, apart from the emotional quality you have referred to? Is there a specific group?

Miss Laptuta: As I mentioned, I found that marihuana users came from all different types of socio-economic groups. Some people are attracted to marihuana; some are attracted to the hallucinogenic drugs; but I suppose whether or not you are attracted to marihuana depends on your life style and your orientation, as I stated.

For a number of people marihuana just seems to fit their personalities and life style because they are very placid, perhaps artistic, but not very excitable.

Senator Prowse: They are lotus eaters.

Senator Neiman: You mentioned that the heavy drug use in the Oshawa area a few years ago decreased noticeably. Did you find a particular reason why drug use had fallen off among those people?

Miss Laptuta: Much of it was lack of availability; much of it was because of education with respect to the harmful effects of the hallucinogenics.

Senator Neiman: Do you think education had that effect?

Miss Laptuta: I do not necessarily mean formal education in the schools, but just the education which comes from experience and from learning from your friends. For example, a number of their friends might really have had a hard time quitting speed once they started; or a number of

their friends might have shown the effects of taking LSD quite a bit.

Senator Neiman: In other words, they saw the damage that these drugs did.

Miss Laptuta: They were able to appreciate much more the damage that could be caused because they could observe it in their friends than they could by simply being told by somebody that these drugs were harmful.

Mr. Weagle: In my experience, I found that many people would give up the use of LSD after they had had a bad trip or had wound up in the hospital as a result of a bad trip. In such cases users tend to swear off LSD, although they will still use marihuana until they have some problem with that. My feeling, based on talking to clients, is that the decrease is due in part to many people seeing the speed freak who really got wiped out and became debilitated through the use of speed. By that example they chose not to go that route, but still continued to smoke marihuana, perhaps.

Senator Neiman: Because they did not perceive the same dangers there.

Mr. Weagle: Yes. As I pointed out in my brief, a lot of people ask, "Who is right? The researchers who say it does cause damage, or the researchers who say it does not?" I have a friend who smokes it, and I have not noticed any noticeable change so far. Granted, there may be things going on in his body that we cannot and will not be able to determine for ten or 15 years. But that is on what I feel a lot of young people are basing their decision about whether they are going to smoke or not.

Senator Neiman: Well, in terms of penalties that we might impose, I understand that your feeling, although you do not favour legalization, is that at the same time you do not want a criminal record imposed on people who simply smoke or use marihuana. Am I right about that?

Mr. Weagle: That is true.

Senator Neiman: Do you feel we are being realistic, that we are being fair, with regard to other penalties, as far as marihuana is concerned? Or do you feel we are being too harsh, or not harsh enough, when it comes to trafficking and some of these other areas?

Mr. Weagle: As a result of my preliminary reading of the bill, I tended to agree with the results with regard to trafficking and selling drugs, because I personally feel that this is an individual who is making hay while the sun shines, who is capitalizing on a certain situation and is profiting by it. I guess I liken him to the bootlegger of years ago, although I was not around during the prohibition era.

Senator Prowse: He served a useful purpose, you know.

Mr. Weagle: He may have, but analogies can be drawn between him and the dealer of today who is into this in a big way.

Senator Sullivan: Mr. Chairman, I have a great deal in my mind about this brief. First of all, I would like to ask you, Mr. Chairman, why the brief requested to be presented by Narconon Incorporated was not allowed to come before this committee.

The Chairman: That is a question that I would suggest we reserve to a later date.

Senator Sullivan: It is diametrically opposite to the one we have heard today.

The Chairman: Have you any questions for this witness, senator?

Senator Sullivan: Yes. Are you a sociologist, sir?

Mr. Weagle: No. My background is in social work, but I am not a sociologist.

Senator Sullivan: There is one particular remark—and I have others—that I would like you to try to comment on, if you can, in your brief, and this is on page 12:

It is true that marihuana is usually the first illicit drug that heroin users use but there is nothing chemically in marihuana which "causes" or "potentiates" a person to go on to other drugs.

What is your basis for that statement?

Mr. Weagle: My basis is on page 13, where I say that marihuana is the first illicit drug used by heroin users because it is thought to be the least harmful, it is the most readily available, and is usually the least expensive. What I am trying to point out is that there is nothing chemically that leads them on to heroin. Again we get back to the addiction-prone person who may not be satisfied with marihuana and goes on to other drugs, or who gets involved in a subculture where other drugs are being used, and because of his inability to make wise decisions in the face of peer group pressure takes up some other drug. At the place in my brief that you quoted, senator, I was dealing mainly with the chemical aspect of marihuana. There is nothing that we know of or that I have read of in the use of marihuana that potentiates the use of hard drugs.

Senator Sullivan: That statement would apply to other drugs as well. It is a pretty broad statement. It is a pretty hard conclusion to make.

Mr. Weagle: In what way, senator?

The Chairman: I think what the witness has said confirms most of the evidence we have heard, that smoking marihuana does not by itself lead to the use of other drugs.

Senator Prowse: Including the RCMP.

Senator McIlraith: Did they not state that evidence a little differently? Did they not say it was not proven that it led to the use of other drugs, but that there were other studies that indicated that the users of hard drugs, or heroin, had used marihuana at an earlier stage? They did not link it in the way of cause and effect.

Senator Prowse: No. I think the RCMP quite specifically said that there was nothing in it *per se*; but all of the connections that I have heard that have been made by witnesses were the same as that made by the witness today, and that is that they get into a subculture where other drugs are available. There is, however, nothing in the drug itself that actually leads them into heroin. That is the evidence of all the witnesses I have heard.

The Chairman: Yes. That is my view.

Senator Prowse: I think, in fairness, that should be said.

Senator Neiman: Mr. Weagle makes that point too in his brief, that heroin users, of course, have used marihuana, in all probability, but—

Mr. Weagle: The vast majority.

Senator Prowse: What I am interested in is the question of penalties, and you have dealt with the situation of the young person of 17 who was involved in this and then right through the rest of his life had this connection with drugs and was considered a drug addict for something that was in fact what one might call a normal adolescent experimentation. Now, for sex crimes involving girls who are under age, the British have a system whereby they have one set of penalties for men under the age of 23, and another set of penalties for those over that age and who ought to know better and be able to distinguish the difference more clearly. I am wondering—and this is purely a personal suggestion because it has not been discussed in committee—if we were to adopt the same procedure in respect to a person under the age of 23 who was found in possession of drugs—in other words, if we were to treat it more or less like a ticketing offence with perhaps a penalty of something like a 30-day probation period, with no question of a second offence and no involvement with the Criminal Records Act, how would you regard this idea? What would be your reaction, as people working in the field, if we had something like that? Would we be solving the main problem of saving younger people from the worst consequences of their acts, simply because they were not old enough to be able to judge too clearly what they were playing with, and yet retain the sanction against the person who is old enough to know the difference?

Mr. Weagle: I think that would have the effect of making the law more fair for a certain segment of the population. The fine itself does not disturb me. A \$100 fine for such an offence, I can accept. We must keep in mind that it is a criminal offence, and I believe that people should be responsible for their behaviour and should be prepared to accept the consequences, but within reason; and that is my basic concern.

Senator Prowse: Really, what we should be concerned about are the younger people who are getting into trouble. Let us say, for argument's sake, anyone under the age of 23—and perhaps it should be under 21; it certainly would have to be an arbitrary thing. Say a young person becomes involved in this for the purposes of experimentation and not because it is something that is intended to be a blatant disregard of the law. Do you think this differential might serve a purpose?

Mr. Weagle: Our surveys also demonstrated that the older a person was, if he smoked marihuana at all, then he tended to smoke it more often. We found that those who might be termed experimenters were among the high school population and among the younger kids.

Senator Prowse: And they are the ones who get hurt.

Mr. Weagle: And they are the ones who get the most attention.

Miss Laptuta: And they are the ones who get caught more often because they are not as careful as others.

Mr. Weagle: This is because their immaturity carries over into this situation as well.

Senator Neiman: Mr. Weagle, if a person is convicted of a crime, then he is obviously regarded as being a criminal. So I thought I should point out to you that you are, in effect, recommending that the offence of possession still be considered an offence, but something less than a crime *per*

se, which would carry with it a criminal record. Am I correct in that, because I think perhaps there could be a little confusion in connection with this point. In other words, there can be another type of offence that would not be deemed a crime, which would carry with it a criminal record. Is it that type of offence to which your recommendation refers?

Mr. Weagle: It would not carry that criminal record for a long period of time.

Senator Neiman: Or stigma.

Mr. Weagle: Yes, something for which a person would not be made responsible by reason of his behaviour.

Senator Neiman: Yes, you are not advocating legalization—in other words, that there should be no offence or penalty for this?

Mr. Weagle: That is correct, but something that would not remain for the rest of a person's life.

Senator McIlraith: Mr. Chairman, I will confine my remarks to a very narrow aspect, the reference to the criminal record part of the offence. I assume that it is fair to say that you are only concerned with the criminal record when the conviction is for possession. You are not advocating that the record be erased for any other charges than the possession of marihuana?

Mr. Weagle: I am confining my views to the possession charges.

Senator McIlraith: Yes. At page 8, and following, of Miss Laptuta's brief, she gives one situation example of a young fellow and his history right through. I read that and agree with it. It is quite clear that a letter to the department would have obtained the removal of the record at no cost. Why was that not done in this particular case?

Miss Laptuta: I really do not know. Do you mean the removal of his record?

Senator McIlraith: Yes.

Miss Laptuta: I believe it was because it was not necessarily the fact that he had this record, but the attitude of the city councillors, their own bias.

Senator McIlraith: No, that was not my question. In your consultation with—I believe you called him a client—this young client, did you tell him to write a letter?

Miss Laptuta: He was not a client, but an acquaintance.

Senator McIlraith: An acquaintance, then. Did you advise him to have his record removed?

Senator Prowse: He could have had it removed.

Miss Laptuta: I was not involved in a counselling relationship with him.

Senator McIlraith: I am trying to find out whether young people of this type know that they can have their record removed.

Miss Laptuta: Most of them do not.

Senator McIlraith: Because this is just about a perfect example of one which would be removed automatically if the question were asked and supported by what you have said here. I wonder if they know of this, and how many of those in the various contact centres know that this is so.

Senator Prowse: It was 1971 that that law was passed.

Senator McIlraith: Allow me to pursue this, because we have the problem of how to handle this situation. I believe we are very close to a common point as to what we are seeking to do, but there is great doubt as to how to do it. This young lady has had much experience in contact with the actual users and young people who are being hurt by criminal records.

Miss Laptuta: As I mentioned earlier, most of them do not even know the implications of a criminal record until they have one.

Senator McIlraith: Are the officers of the foundation familiar with this? Is that a fair question?

Mr. Weagle: It is not a fair question, because I cannot answer for all the officers of the foundation, but I know that our local office is aware of it.

Senator McIlraith: Do you have much discussion with these young people about this from time to time?

Mr. Weagle: If they have a charge, it is often brought up in counselling sessions, if they are clients of ours.

Senator McIlraith: Let me deal with another aspect of this. In a possession charge, there is no such thing as simple possession; there is just possession of the drug. That is the wording used. There is always a quantity. We are thinking this morning, in terms of the young people we are talking about, of very small quantities. Let us suppose that a more sophisticated young person had a conviction for a very large quantity, but for some reason there is no conviction for trafficking, but only for mere possession. Let us assume that the young people who start experimenting with marihuana go in two directions. One direction is not very serious, but, I presume, some may ultimately go into the wider area of drug use and into the drug trafficking end.

Have you given thought to there being no criminal record at all of the conviction, and its implication on police work, where you are dealing with a sophisticated drug trafficker on a drug trafficking charge at a later stage? Have you given any thought to that aspect? If there were no records, the police would lose the benefit of that information which might be useful in the future.

Mr. Weagle: You mean in proving a second offence?

Senator McIlraith: In proving a second offence or, in later years, in building up a picture of what this man had been doing, in tracing and relating his history when he moved from Oshawa to Ottawa, to downtown Montreal, to the airport, where it goes over to the American side or into Vancouver. Have you given any thought to that specific aspect, of having no criminal record?

Mr. Weagle: That is what this committee will have to address itself to, as you know. That can only be determined by how serious you want the charge of simple possession, or possession for a first or second offence, to be.

Senator McIlraith: This is precisely what I am concerned about. I want to safeguard the ability of the police to deal with the trafficking charge on the many drugs—heroin, and so on, because some traffickers are into many drugs operation—to deal with that situation and not be impaired in any way. To some extent, at least, the record of

simple possession having existed might be of help to them. Have you given any thought to that aspect?

Mr. Weagle: I believe we are getting into areas in which I am very uncomfortable. That is really not my area of expertise. When a person is arrested and his slate is wiped clean, does that arrest become null and void—does it no longer exist? I have to ask you that question.

Senator McIlraith: No. This was done on the advice of personnel associations and certain of the major companies—and, curiously enough, on the advice of some penitentiary inmates also. They all preferred that it not be obliterated, because, in terms of future employment—taking the example of the young person in the brief—the opinion was that employers would be more likely to damage the person if it was found he had lied on his application, and that his answer was likely to be affected—there was a lot of work done on this—if, to the question, “Have you ever been convicted?” the answer was “Yes”, or “Pardoned on such-and-such a date.” On that point, there was unanimity among employers, and I am talking about very senior corporations in this country, as well as on the part of penitentiary inmates, the men with the records. It was a curious thing.

Mr. Weagle: The issue in my mind, senator, is not that the record of arrest and conviction exists, but the consequences of that record in the individual's future, in that it may hinder him in obtaining a visa or in progressing through our society.

Senator McIlraith: You have given a perfect example of that in the brief.

Mr. Weagle: Yes.

Senator McIlraith: That is what you want removed, whatever method we use?

Mr. Weagle: The fact that I got a parking ticket a year ago will not hinder me in obtaining a job, whereas a record of this type might very well hinder me in obtaining a job or a visa.

Senator McIlraith: You were talking about not having a record at all, which is a pretty difficult thing to accomplish, because the media report these things. As a result of questioning you, I think what you are really concerned about is the unjust consequences that flow from the conviction of a young person who in later life ceases to improperly abuse the use of drugs.

Mr. Weagle: That is right.

Senator McIlraith: Have you anything to add, Miss Laptuta, to the discussion at this point? You have interviewed many of these young people.

Miss Laptuta: I do not know how it can be done so that there is no criminal record. My major concern is that the criminal record will not be with the individual for the rest of his or her life, thereby molding the future of that individual.

The Chairman: Again, you are concerned with the consequences.

Miss Laptuta: Yes.

The Chairman: Thank you, Mr. Weagle and Miss Laptuta, for your assistance.

The committee is now adjourned until 2 o'clock.

The Committee adjourned.

Upon resuming at 2 p.m.

The Chairman: Honourable senators, we continue our examination of Bill S-19 with witnesses who represent the Association of Probation Officers of the provinces and the territories. We have here Mr. Lloyd de Walt, Director of Probation, Winnipeg; and with him Mr. Ron Nadeau, Chairman, Planning Committee, and Director of the Probation Association, Fredericton, New Brunswick. You have before you a copy of the brief, which Mr. de Walt will read. Would you proceed, Mr. de Walt?

Mr. Lloyd de Walt, Director of Probation, Winnipeg: Mr. Chairman and honourable senators, we are pleased to have this opportunity to make this statement on behalf of probation directors from the provinces and territories.

This statement on Bill S-19, an act to amend the Food and Drugs Act, the Narcotic Control Act and the Criminal Code, is presented on behalf of adult and juvenile probation directors from the provinces and territories. Directors of probation services have met over the past year to discuss matters of mutual interest and concern, which includes legislation on delinquency and crime. We do not as yet have a formal association. Nevertheless, in compiling this statement, all probation directors were canvassed, and, whereas it cannot in all respects be said to represent the views of all, we are confident that it does express the majority view on most, if not all, issues dealt with.

Statistically, probation services are responsible for the majority of juvenile and adult offenders who are sentenced to some form of supervision by the courts. It is from this experience that we speak.

Regarding experience, it has been generally observed for some months that, to an increasing extent, fines and probation orders are being substituted for sentences of imprisonment for possession of cannabis. A probation order may include an absolute or conditional discharge from the conviction, a fine plus probation (with or without supervision), a term of imprisonment to be followed by probation supervision, or a sentence to be served intermittently. Practices vary somewhat from one province to another and from court to court within a province. In some jurisdictions, absolute or conditional discharges or fines are the usual disposition—that is, relative to cannabis offences—while in others probation supervision is ordered in the majority of cases. In some larger centres, attendance of special lectures on cannabis is imposed as a condition of the probation order.

There is fairly general agreement among probation officers that when the use of cannabis first gained prominence in Canada and imprisonment was the customary sentence, supported by Appeal Court decisions, probation was a viable alternative. Now that imprisonment for simple possession is the exception, it is felt that greater discretion should be exercised by some courts in the use of probation. Some cannabis offenders, by virtue of their deteriorating life styles, necessitate some form of intervention, and probation supervision may be the appropriate intervention. The selected use of probation pre-sentence enquiries to determine the appropriateness of probation in specific cases should be encouraged. In the majority of cases, however, the use of supervised probation seems unnecessary,

and could, and in some situations does, impose work demands on probation services which cannot be adequately handled under existing staffing, thus detracting from its ability to provide effective service to more needful cases. Attendance by users of special lectures can reduce the time involvement of probation staff, but the results on first examination, are not encouraging from the standpoint of attitudinal change. Be that as it may, it can be argued that the cannabis user should be made to feel some inconvenience for having committed an offence and that compulsory attendance of lectures is a reasonable inconvenience.

Experience with cannabis users on probation is that the majority have not been involved in other delinquent or criminal acts. Many are college or high school students from middle income families. Children from deprived families and neighbourhoods seem more prone to experiment with glue and gasoline inhalation and other toxic substances that are more accessible and less expensive than cannabis. Because the majority of cannabis users are relatively stable and law abiding and have strong peer support for their "right" to use the drug, probation counselling per se has limited impact.

One of the key purposes of probation is to effect attitudinal change. If youth generally see no harm or wrong in using cannabis, and if Canadian society as a whole has mixed feeling on the subject and tends to a more permissive approach and to a more liberal attitude toward varying life styles, there is no single, clear goal to which a cannabis user can be encouraged to direct his attention. This is not the case where the offence committed is clearly disapproved of by society generally, including the offender's peers, as for example, robbery, theft, etc.

An added concern with respect to the use of probation in these cases is that such a system of community control must be supported by effective sanctions if it is to maintain its credibility. Loss of liberty through institutional confinement is such a supportive sanction. It is not too difficult, then, to perceive a situation where a cannabis offender is eventually given a prison sentence for breach of probation. Where, for the reasons discussed, non-use is an unrealistic goal in the first place, the ultimate consequence of imprisonment to maintain the potency of the probation program leads full circle to what has proven ineffective as a deterrent, namely imprisonment. The dilemma remains—how does society compel change when what it desires to change does not have general public support. It is doubtful that criminal sanctions are the answer.

With regard to juveniles, the legal sanctions provided for in Bill S-19 do not of course apply directly to the cases of juveniles charged with possession, trafficking, importing, or cultivating in that the dispositions provided for under the Juvenile Delinquents Act apply in the case of all juveniles found delinquent, regardless of the offence committed. In essence, however, except for the fact that the maximum fine under the Juvenile Delinquents Act is \$25.00, equivalent penalties are available to the Juvenile Court within the context of the Juvenile Delinquents Act. It should also be mentioned at this point that the upper juvenile age varies from province to province. The upper age in Quebec and Manitoba is eighteen, in British Columbia and Newfoundland it is seventeen, in Alberta it is eighteen for girls and sixteen for boys, and in all other provinces it is sixteen. As with adults, statistics provided by the Senate Committee as compiled by Statistics Canada, show a marked increase in delinquencies related

to cannabis and hashish from 291 in 1968 to 1308 in 1971. Our collective observation is that this figure has continued to escalate.

Although our observations about the use of probation with respect to adults is applicable in most respects to older juveniles, we feel there is greater likelihood of effecting an attitudinal change toward its use on the part of younger juveniles who are now suggestive, more amenable to influence and less likely than young adults to have opted for any particular life style. We, therefore, believe that in the case of every juvenile charged with a cannabis offence, a pre-disposition assessment should be made by a probation officer to assist the court in deciding upon an appropriate disposition. Probation would seem to be a more viable alternative in these cases than would be the situation with adults.

Regarding legalization, because of the widely varying opinions and attitudes across the country with respect to the harmful effects of cannabis on the individual, his family, and on society in general, there is mixed opinion among probation directors whether or not it would be desirable to permit its use legally. Whatever the ultimate decision, we are concerned that the effects of society's methods of control and intervention not be more harmful to the individual than is the activity it is attempting to eradicate.

The position put forward by some probation directors is that cannabis possession be decriminalized but not legalized. This is not to suggest that distribution of the drug be legalized since this would increase its availability, but only that possession not be a criminal offence. Persons in possession would be dealt with somewhat similar to regulations under provincial liquor control legislation. Those holding this view support it on the basis that the harmful effects of the drug have not been established to the satisfaction of many experts, that it is non-addictive, and that individuals involved in possession are consenting and co-operating persons, and, therefore, may be classified under those offences having no victim. Rarely, if ever, is there a victim who has reason to complain as in crimes against persons and property, although there may be "victims" in a sense, i.e. other family members, associates, etc. However, the emotional and financial consequences falling on these persons cannot be said to be a violation of their civil rights. Though the use of cannabis may be undesirable, it is held that the rights of others are not violated. It should, therefore, be dealt with not as an offence to be punished, but as an undesirable activity to be discouraged and, if possible, prevented through social and educational means.

While not fully supporting the above stated position, probation directors in general hold to the principles of criminal justice as enunciated by the Canadian Committee on Corrections, the Ouimet Committee. One principle in particular has relevance here. In summary, this principle is that

"no conduct should be defined as criminal unless it represents a serious threat to society and unless the act cannot be dealt with through other social or legal means"...

The Committee proposed "the following criteria as properly indicating the scope of criminal law:

1. No act should be criminally proscribed unless its incidence, actual or potential, is substantially damaging to society.

2. No act should be criminally prohibited where its incidence may adequately be controlled by social forces other than the criminal process. Public opinion may be enough to curtail certain kinds of behaviour. Other kinds of behaviour may be more appropriately dealt with by non-criminal legal process, e.g. by legislation relating to mental health or social and economic condition.

3. No law should give rise to social or personal damage greater than that it was designed to prevent."

Although it can be argued that these principles clearly support the abolition of cannabis possession as an offence punishable by criminal sanctions, it is our view that the possible harmful effects of cannabis on the user and its overall impact on society are so in dispute and public attitudes on the subject so varied that legalization of its use would not at this time have general public support. Equally important, removal of sanctions should be accompanied by a well conceived alternative, witness the problems arising from the failure to provide detoxification centres and other programs when common drunkenness ceased to be treated as an offence in most provinces. I should add here that is probably a poor analogy. The suggestion was not that the two are similar but that we did not catch that soon enough. Although we believe that (barring new evidence that the use of cannabis is seriously harmful) the possession of cannabis will in time not be considered an offence, we support the "half-way" measures embodied in Bill S-19. At the same time, we wish to recommend that certain provisions of the Bill be amended.

Some comments on Bill S-19 are as follows:

1. Removal of imprisonment (except for non-payment of fine) as a penalty for possession of cannabis: We support this provision out of conviction that, in general terms, imprisonment is not an effective deterrent to crime. In the case of cannabis, this seems to be borne out by available statistics. In Canada, over the five-year period 1969 to 1973, convictions for simple possession rose from 2,313 to 18,603 (95% of total convictions related to cannabis). Convictions for trafficking and possession for the purpose of trafficking rose from 633 to 1,213 during the same period a much smaller rate of increase.

Prison sentences were the usual penalty for all cannabis offences when its use in Canada first began to spread in the late sixties and early seventies. Where the lower courts imposed lesser penalties, these were almost invariably upset by the Appeal Courts. Despite this tough approach, the use of cannabis escalated and, in part as a result of the ineffectiveness of imprisonment to stem its growing use and partly out of growing public concern over the possible harmful effects of imprisonment on otherwise law abiding young people, the courts, supported by a directive from the Justice Department to its Crown Attorneys, began to substitute fines and probation in the place of imprisonment for simple possession. The result is that in 1974, approximately 95% of person convicted for simple possession were dealt with by dispositions other than imprisonment. It is of course a fact that the use of cannabis has continued to rise, leading to the argument that without severe penalties, its use would be even higher than it is now, and that a further reduction in penalties will only encourage its spread. It seems to be the case that a significant improvement in the situation will be achieved, it at all, only if effective measures other than criminal sanctions are discovered or youth's flirtation with drugs spontaneously subsides. There is the danger in treating cannabis offenders as

criminals that other forms of unlawful conduct will thus be encouraged.

In summary, it is our view that in the majority of cases of simple possession involving adults, that an absolute or conditional discharge or the imposition of a monetary penalty is the best approach. We are concerned, however, should non-payment of a fine lead automatically to imprisonment. Some determination should first be made of the individual's ability to pay and, wherever possible, an alternative to imprisonment such as "community work order" should be provided for in law. If there is realistically no option but imprisonment, i.e. where the offender can but refuses to pay a fine, then an intermittent sentence, as provided for under section 663 of the Criminal Code, should be made possible. Such a sentence can be tailored to interfere as little as possible with the person's normal obligations and responsibilities, and at the same time seriously impinge upon his leisure time, thus serving as a meaningful penalty even though it would unlikely be any more effective as a deterrent to future cannabis use than outright imprisonment has been in the past.

2. Criminal record: Bill S-19 would virtually remove imprisonment as a penalty for simple possession. This would eliminate much of the stigma and contagion associated with imprisonment. It would remove cannabis from the purview of the Narcotic Drug Act to the Food and Drugs Act, thereby removing the cannabis offender from the shadow of addicting drugs and the greater stigma attached to their use. This is commendable. It would not, however, obviate the acquisition of a criminal record and this in itself can have serious consequences, particularly so, considering the fact that many users are high school, college and university students about to enter professional or other careers, some of which deny admission to persons with criminal records. A conviction may well have consequences for an individual in excess of the problem society is seeking to control. There is unfortunately little information available by which to measure these consequences. Some way should be found to automatically wipe out the record of all persons convicted of simple possession.

Barring the existing conflict between the Criminal Code and the Identification of Criminals Act, an offender receiving an absolute or conditional discharge would have his conviction wiped out—immediately in the case of absolute discharge and after the stated period in the probation order in the case of conditional discharge—, whereas this would not occur should the penalty be a fine which in fact might be considered a lesser penalty than a conditional discharge. Discharge from a conviction, perhaps more than any other measure, would have a salutary effect upon the person's attitude to continued use of cannabis. We offer the further suggestion that the contradiction that now exists between the intent of the absolute and conditional discharge provisions of the Criminal Code and that of the Identification of Criminals Act be erased. To briefly summarize the problem as we understand it, amendment to the Identification of Criminals Act which make specific reference to the possibility of records of absolute and conditional discharges being destroyed after a period of time, led to the interpretation that these discharges must, therefore, be registered—something the original Criminal Code amendment apparently intended be avoided. It is our understanding that as things now stand, an offender receiving an absolute or conditional discharge may state that he has not been convicted of a criminal offence, but he must answer yes if questioned whether he has a criminal record. He can rid

himself of the criminal record only by going through the process of applying for and obtaining a pardon.

With respect to summary conviction proceedings, the bill would continue to rely on the criminal justice process to deal with all offences related to the use and distribution of cannabis. It would, however, attempt to reduce the impact of the law in cases involving possession and, under extenuating circumstances, trafficking, importing and cultivating, by permitting proceedings by summary conviction rather than by indictment. This would substitute court appearance by notice of summons for arrest and possible detention. It would speed up the trial process by eliminating election of method of trial and it could, if section 52 is so interpreted, obviate attendance at a police station for routine fingerprinting. Persons charged with summary conviction offences may only be fingerprinted if they so consent. Section 52 of the bill unfortunately lends itself to more than one interpretation. It could be concluded that to satisfy the requirement of this section, that for the purpose of registration of the offence under the Identification of Criminals Act, fingerprinting is required in that fingerprinting is the means of positive identification employed under that act. It is true that summary conviction offences may be registered with the fingerprint section and that information supplied to those having legal access to it is provided with the notation that the offence is not necessarily supported by fingerprints.

Fingerprinting may be considered by some to be a relatively unimportant matter and in a sense it is. On the other hand, compulsory attendance at a police station for fingerprinting is viewed by many as an unwarranted invasion of privacy, and, certainly, it does much to implant the stamp of the criminal process on the entire proceeding and to further alienate those we seek to divert to more socially acceptable activities.

Regarding trafficking, importing and cultivating, we support the added flexibility permitted by the bill by allowing the trafficker, importer or cultivator to be dealt with either on summary conviction or by indictment. This quite rightly will permit the prosecution and the courts to differentiate in approach between the professional criminal and the youthful novice or young person who may be trafficking, importing or cultivating solely for his own use or for himself and friends without profit motive.

While we agree that trafficking, importing and cultivating are serious matters not to be confused with simple possession, in principle we have reservations about the wisdom of a mandatory minimum penalty imposed on the importer proceeded against by indictment, as provided for in section 50. It is true that where the importer can establish that he imported or exported cannabis for his own consumption, the minimum does not apply. It may not be easy for him to establish this fact, but, more to the point, a minimum penalty precludes the use of a probation order which could include the intermittent serving of a sentence. This section of the bill would seem to run counter to the progressive amendments that have been made to the Criminal Code in recent years, not least of which was the removal in 1969 of all restrictions to the granting of probation except for those offences carrying a mandatory minimum sentence, and there are only two or three offences that carry a mandatory minimum, notably murder and a second conviction for drunken driving. Armed robbery, rape and other offences equally, if not more serious than the importation of cannabis, do not carry a mandatory

minimum and may, if circumstances in particular cases warrant, be disposed of by probation.

It is not suggested here that imprisonment is not in many or even the majority of these cases warranted, but rather that the courts should, as in equally serious offences, be granted wide discretionary power which they can be expected to exercise wisely, subject always to review and possible reversal by the appeal courts. In this way, sentencing practices can more readily keep apace of changing social attitudes as has been evidenced in the shift of the lower courts, supported by the appeal courts, away from imprisonment for possession of cannabis to absolute and conditional discharges, fines and probation. Legislation is much slower to change in response to changing public attitudes. It is granted that the Crown could, under Bill S-19, move with public opinion by declining to proceed by way of indictment and thus avoid the mandatory minimum penalty.

We would make the further point that it is equally desirable, and sometimes possible, to divert the importer from criminal activity to a productive, law abiding life. Available data suggests that most persons convicted of cannabis offences are young. It is not unreasonable to assume that some youth have and will continue to get caught in the snare of professional criminals, but, once caught, to be amenable to help. Imprisonment may have the effect of confirming the young importer in the ways of crime. If there was evidence to support the idea that severe or mandatory prison sentences are a deterrent to crime, either specific or general, a much sounder argument could be made for mandatory imprisonment of the importer.

The following are our conclusions:

1. We recommend that imprisonment for non-payment of a fine be eliminated, except in those cases where the person can but refuses to pay. We would suggest that where the person cannot pay, probation with "community work order" or other suitable condition be substituted, and where the offender can pay, but refuses, that probation with "community work order" or intermittent sentence tailored to his situation be the alternative. This is not now provided for in law. Perhaps the court should be permitted, upon review, to substitute such a sentence for the fine that has gone unpaid.

2. We suggest that provision be made for the automatic wiping out of a conviction for cannabis possession after a period of one year where a disposition other than an absolute or conditional discharge is imposed, and that the necessary amendments be made to the Criminal Code and/or the Identification of Criminals Act to remove the existing contradictions and the necessity of registering absolute and conditional discharges in the first instance.

3. We support the substitution of summary conviction proceedings in place of indictment, but, do not support section 52 which confuses and could largely nullify the original intent. We suggest that section 52 be deleted in its entirety, but failing this, that (1) reference to section 48, possession, be removed, and (2) that the question of fingerprints be clearly spelled out so as to rule this out as a requirement.

4. We suggest that section 50(2)(b)(ii) be deleted, thus removing the only mandatory minimum for a cannabis offence, leaving it to the courts to decide in all cases what the appropriate sentence will be.

We thank you for your attention and for this opportunity to present our views.

The Chairman: Thank you, Mr. de Walt. Senator McIlraith.

Senator McIlraith: Mr. de Walt, there is just one point I want to clear up. It may be a matter of semantics only, or it may be a point of some substance. Turning to page 7 of your brief, and the large paragraph in the lower half of the page, you have this sentence:

Some way should be found to automatically wipe out the record of all persons convicted of simple possession.

I want to clarify your use of the word "all", in that connection. Suppose you have a case of a man convicted of simple possession, and subsequently, in six months, it turns out that he is a major trafficker, a professional, full-time trafficker. Do you still want his conviction for simple possession wiped out? You use the word "all".

Mr. de Walt: Well, it seems to me that if he is later charged on a more serious offence, the earlier conviction of possession may not be that relevant. It probably would not alter the disposition of the court to any extent.

Senator McIlraith: But why would you be concerned with wiping out that record of simple possession in that kind of case? It might be of some interest to the police, I suppose.

Mr. de Walt: The only thing is, how can you predict, when you wipe out a sentence, that that person might get involved in a more serious sort of offence?

Senator McIlraith: You have used the word "all," and I put the proposition a little differently. He has already been convicted of these subsequent offences. Surely that is not your concern as a probation officer. I am just picking on the word "all"; it is a very narrow point.

Mr. de Walt: I understand your question. In the case of, say, a conditional discharge, if the period of the probation order, let us say, is one year, and the person is involved in an offence during that year, then of course he has to answer to the initial charge, and it is taken into account when he is dealt with on the new offence; so there is that time period during which, in the case of the conditional discharge, it can be brought up, and, in a sense, used against him. If, as we suggested in the case of a fine, the record be wiped out after one year, they still have a period of one year during which that conviction could be referred to in subsequent proceedings on a new offence.

Senator McIlraith: Well, we are concerned here with specific legislation, and I think it is fair to say that we are all concerned with the consequences of criminal records on young people who have become casual users, who have had a conviction, and who then go on to leave the active drug milieu, or, at least, do not increase their activity in it with regard to other drugs, like heroin, and so on, and yet, as a consequence of this earlier conviction, have a criminal record. We are all concerned with finding a method of dealing with that problem.

I do find the use of the word "all" in this particular case difficult to understand. I do not understand why these persons, whether they are known drug traffickers, or heroin users, a year later should automatically have their records wiped out. I do not follow that. It does not seem to be logical to me. It does not seem to be part of the representations that have been made on this other very serious problem.

Mr. de Walt: I would like to say one more thing on that. The thing is that if it is wiped out after a period of time, until that period has expired, and the individual has remained trouble free, then, in effect, he is still dealt with on the basis that he has a conviction; so that he has to be, under that procedure, at least, trouble-free for the period of the conditional discharge, or, if it is a one-year automatic, that period of one year.

Senator McIlraith: Why should he not be required to be trouble free until the conviction is wiped out, instead of just merely until the terms of the probation expire?

Mr. de Walt: I beg your pardon. That is what we were intending to convey here. Maybe we have not expressed it too well.

Senator McIlraith: On a related point, let us take page 11 of your brief, paragraph 2.

We suggest that provision be made for the automatic wiping out of a conviction for cannabis possession after a period of one year . . .

Why do you require it to be automatic? There may be, among a hundred persons convicted, two who would not make application because they are heavily engaged in the drug promotion business. Why should they not have to apply? Why automatic, as distinct from on application?

Mr. de Walt: Well, I suppose in part because if it is not automatic, if they have to apply, it involves a rather complicated process that might discourage many people from applying, and maybe they should have consideration that is equal to the consideration accorded to those who are more likely to apply. I think people from disadvantaged communities would perhaps be less likely to apply than people from, say, a middle-class district, and therefore I think the law should ensure that they are dealt with equally, whether or not they apply. That would be my feeling.

Senator McIlraith: In the course of your work in the probation field, do you find that application for removal of the criminal record is a complicated business?

Mr. de Walt: Yes. Despite the fact that the Criminal Code says that a person who receives an absolute discharge—and these are not the words of the Criminal Code—will have his conviction wiped out, in effect, he will be deemed not to have been convicted.

Senator Langlois: There is no such thing as wiping out a conviction under the Criminal Code.

Mr. de Walt: But the Criminal Code says that he will be deemed not to have been convicted.

Senator Langlois: He still has to answer "Yes" if he is asked.

Mr. de Walt: That is right; that is because of another act, in part.

Senator McIlraith: That is not the point I was concerned with here. I was not dealing with probation cases: I was dealing with the criminal records legislation and the application for removal of the criminal record. That is not related to possession at all. They may have served their sentence. Do you find that application a complicated procedure in your work?

Mr. de Walt: I apologize for not having introduced Mr. Nadeau here. He will probably be better able than I to field some of these questions. My experience, however, has been that many persons in court who receive an absolute or conditional discharge believe that they therefore have no record, and when the Code was first amended, some courts were telling persons who received the sentence that they were giving them an absolute discharge so that they would not have a criminal record. I understand that very few actually go to the trouble of applying for a pardon. That involves an investigation, and it involves, certainly, time and initiative on the part of the offender to have it wiped out. It is not an automatic thing.

Senator McIlraith: Your point is fully made in the brief with regard to conditional discharge, and so on. I was not dealing with that point, however. I was dealing with the cases where the persons concerned have served their sentence, whatever it might have been, whether imprisonment or fine or otherwise, and a simple application for a discharge of the criminal record.

Mr. de Walt: Yes.

Senator McIlraith: The point we are concerned with is finding some method that would gather up these cases, and perhaps you may think that we are trying to be over specific, but I want to get to some possible suggestions that we might use in attempting to deal with this question. Now your suggestion has been in your brief, as we see it here, a simple proposition of automatic discharge of all records, and I am picking up those two words, "automatic" and "all" because I can see several objections to the use of either one of those words.

Mr. de Walt: I should like to make clear that we are talking about automatic removal for possession only. It is now possible on absolute and conditional discharge to have the conviction wiped out. The lesser penalty in many cases is the fine. To my mind, it is a lesser penalty than the conditional discharge and yet the conviction is not wiped out. So our argument is that these should all be dealt with equally so as not to have this disparity.

Senator McIlraith: Well, I understand the point concerning the disparity because that is clear from the brief, but this other point is not quite so clear.

Senator Croll: Mr. Nadeau, what is your experience with respect to discharge?

Mr. Ron Nadeau, Chairman, planning committee, director of probation association, Fredericton, (New Brunswick): I cannot speak from any practical experience in the area of people applying for pardons, if that is what you are referring to, because that is handled primarily through the National Parole Board, and they prepare the investigations and handle all the applications and so on. So, probation officers, as such, are not directly involved in that process.

Senator Croll: But you know people who have applied, and you have talked to them. What have they said to you?

Mr. Nadeau: From the comments I have heard, it seems that they are most anxious to make the application, and I think that people, and young people in particular, who experience the weight of the criminal sanctions for these kinds of offences are anxious to have the record expunged. But many of them feel that in an investigation having people checking up on them could be embarrassing, and I

think that there are occasions when perhaps they should apply but they are a little reluctant because they are afraid of what will be turned up by the investigators. The procedure itself is straightforward from the point of view of the individual making the application. He has a form which he fills out and he puts in a few references, and there is not all that much involved for him at that stage. But then the consequences could be quite significant. He may or may not be prepared to disclose fully what has been going on in his life and in saying that I am not necessarily implying that there is any criminal activity; he may just not want to be investigated.

Senator Croll: In a small town, particularly.

Senator Laird: Senator McIlraith has raised one of the questions that I had in mind, so I will confine myself to another question more in line with your own type of work, I think. There is a problem of getting across to the person convicted information about the harmful effects of marihuana. It has been suggested here by at least one witness, and perhaps more, that part of the sentence should involve a compulsory course of education on the harmful effects of marihuana. Would you consider that suggestion as having any merit?

Mr. Nadeau: I would like to offer one comment on that, and then perhaps Mr. de Walt would like to add something. We talked about this this morning, to compare notes as between one part of the country and another. There seems to be some value in general educational techniques in terms of trying to modify people's attitudes, but in this area we are talking about a phenomenon that is quite prevalent, particularly among the younger age group, and there are certain myths or pieces of information that are accepted as truths and that the young people who are most involved in the use of marihuana accept as fact because they are so prevalent. So we are faced with the limited effectiveness of our educational means as a tool to modify the attitudes, particularly of younger people, and perhaps more and more when you get into the older age brackets as well. So I really wonder whether we have adequate means to modify attitudes that are being influenced in more direct ways towards the use of marihuana, by peer group pressure, by other users speaking of the wonderful, pleasurable experiences and passing it on a friend-to-friend basis. The effect of that kind of information seems to outweigh by far an educational campaign on the basis of the information we have. If we had some information that was pretty clear-cut, and if you could point to it and say, "There is the precise damage or harm done to your neurological system" or whatever "by marihuana then the campaigning might be effective; but where your information and research reports are still somewhat hesitant about making firm conclusions of this type, I do not think that an educational campaign will be very effective.

Senator Laird: Then, allied to that, we have had a fair amount of evidence that the excessive use of marihuana reflects a personality problem whereby the individual is prone to turn to some sort of crutch. Has that been your experience as a probation officer?

Mr. de Walt: I think the observations that we have received from various directors are to the effect that that is not too applicable when you talk about marihuana. But it certainly seems to be true if you talk about addictive drugs and other substances of that kind. The people using marihuana would appear not to have any serious personality difficulties, and that is one of the reasons why proba-

tion officers feel that the vast majority do not stand to profit a great deal by being on probation, because they do not have any particular major hangups, and they do not have any particular fear of using the drug.

Senator Laird: Let us confine ourselves to the excessive use of marihuana. Is that allied with personality problems?

Mr. de Walt: Well, I would expect that there are certainly many who use marihuana who have personality problems, and I would also suspect that they would be the ones who would abuse it.

Senator Laird: Do you see any way we can rectify that situation?

Mr. de Walt: Well, senator, like any other offence, you can look at it in general terms, but if you are talking about individual response, then that requires that you view each individual separately. That is the reason why we have suggested, in those situations where this appears to be the case, there should be a pre-sentence inquiry carried out by a probation officer to assist the court in disposing more appropriately of cases.

Senator Laird: That is about as far as you can go, is it not?

Mr. de Walt: I would say yes.

Senator Greene: Mr. de Walt, can you help me with this situation? In assessing the weight to give to your brief I think we must consider how efficacious probation has been in these cases in the past. Have you enough experience in this area yet to give us some help as to how many or what percentage of people who come under probation and guidance have ended up able to control the habit? For instance, we have pretty clear evidence from organizations such as Alcoholics Anonymous that they have done wonderful work in that area. But that involved the original decision, "I want to beat this thing." I wonder, particularly in light of Mr. Nadeau's words, whether you know it will not help anyone to be released unless he decides he wishes to beat the problem and, if he is under probation and has to pull the other way from the other young people and says "I'll be glad to get rid of those guys and join the gang again," whether probation will do more harm than good. Can you help us with any statistics as to whether you have helped cure some of your probationers, or is there any experience yet?

Mr. de Walt: Unfortunately we do not have any statistics and I do not know of any studies that have been directed to marihuana users on probation. So we only have our collective judgment, and that has been with a very few marihuana users who have been on probation and really require probation, in the first place, in the sense of having some personal difficulty which was behind their use of the drug. We therefore do not feel it has been particularly effective in that regard. I know that does not answer your question too well, but that has been our experience.

Mr. Nadeau: I would like to add a comment, that in my opinion there is a function that probation officers perform in terms of the criminal processing of those charged with this type of offence. They play a role in relation to the sentencing of those charged, prosecuted and convicted of such offences. There, I believe, is where probation officers can make some kind of significant contribution to this business. They attempt to identify for the court those who perhaps require some type of specialized treatment or

intervention other than the usual manner of handling cases through the courts. These people can be selected for special attention. In my opinion, that is one contribution they can make.

On the side of actual supervision of cases placed on probation or under supervision by the courts, we have found through research of probation effectiveness in other areas that it is most difficult to establish the criteria which should be used to determine whether the process is effective. Perhaps, given sufficient time, we might be able to first of all establish the criteria to enable this success. Secondly, we may establish the scientific means by which to measure this in a controlled, realistic manner. Possibly there are some trends to indicate that these types of measures are being developed through more recent developments and studies in criminology and sociology which aim at attempting to identify indicators, or the factors that help up to predict behaviour. As we further develop our tools and techniques for measuring these aspects, we will be able to judge our effectiveness.

Probation has been seen as a rehabilitative tool, and over the years we have learned that this is not necessarily the case. Probation is not an effective tool of rehabilitation and it is being used by courts, prosecutors and so on to do other things, in addition to simply providing a means for rehabilitation. Prosecutors recommend probation as one of the alternatives in the sentencing process for plea bargaining and sentencing purposes. It is a human approach to handling offenders. It takes into account many human factors which may not be recognized by imprisonment or fines. These are some of the advantages to a probation type of disposition. There are probably many more, but I would like very briefly to mention those.

Senator Greene: Are there any instruments in the probation structure to enable a type of group therapy approach to this problem? I was very impressed once in court in New York to see Sam Liebowitz, who happened to be a great god of mine, and is now a judge and was sitting in family court that day. Rather than our one man for one client, they had a psychologist, a psychiatrist and a probation officer supervised by a top-flight legal mind such as Sam Liebowitz, treating the individual as a case to be worked on collectively to help cure him of this juvenile delinquency to crime. It seems to me in this area that a probation officer, if he had a doctor, a sociologist and, in some cases, someone who could direct the solution of personal problems by way of employment, et cetera, working with him, might have a better approach than a man per man. Do you have within your probation system instruments to make possible a clinical approach such as this, maybe on a collective basis, with medical help?

Mr. De Walt: Senator Greene, there are in many places group approaches being used but, generally speaking, the group approach, or individual therapy, or whatever is directed, treats those who have a problem or are recognized as having some problems about which they wish to do something. However, putting aside those perhaps minority cannabis users, who do have personality defects, the majority are, in fact, relatively normal individuals and use cannabis because they like it and there is strong peer pressure to use it. There is no clear evidence, to their minds, that it is harmful. They do not feel there is anything about them that they wish to change. So, how do you bring together a group of people such as that and influence them through a group therapy process? They do not recognize any need to change, or any desire. So, in my opinion,

we must differentiate between the users who have some serious personality problems and, I would say, the majority who appear not to have any serious personality or social hang-ups.

Senator Sullivan: May I interject a supplementary here? It might interest Mr. de Walt to know, reverting to Senator Laird's remarks with respect to the personality problem, that Powelson of the University of Berkeley, California, produced a report six years ago based on his examination of over 1,000 people who had smoked marihuana rather extensively. At that time he made a rather categorical statement, that he could not see any ill effects from it. I quoted him when I spoke before the Senate on this subject. Recently in reading the *Reader's Digest* I noticed that they have gone to a good journal for a change, the *American Journal of Neuropsychiatry*, and Powelson has retracted all those previous remarks. He has declared quite definitely and emphatically that these people who smoke marihuana daily, day in and day out, all develop personality problems.

Mr. de Walt: Senator, I would just like to clarify our position. We have not commented upon whether it is harmful, because we do not believe we have any expertise in that area. One of the reasons we have tended to favour the sort of half-way approach, as we put it, that Bill S-19 is taking is that there seems to be really conflicting evidence as to the harmfulness of marihuana. Therefore, we do not suggest whether it is or is not harmful. We speak simply from our experience with individuals on probation, and the majority at this point seem not to be suffering from any serious personality defect. That is all we are saying.

Senator Robichaud: I would like to question the practicality of your first conclusion, when you refer to the ability of the individual to pay a fine. Who would determine such ability to pay, and by what mechanism?

Mr. Nadeau: I think that is an appropriate role for the probation officers attached to courts.

Senator Robichaud: As a pre-sentence report to the court?

Mr. Nadeau: In some instances the courts require written reports, but there are occasions when a judge can request a verbal reply or report from a probation officer as a result of an interview with an accused or convicted person, and perhaps his family who may be in court. This certainly is not possible in all cases, but it is a practice in certain courts—perhaps the less busy courts, those where judges have more time to individualize their approach.

Senator Robichaud: Would the probation officer go through the process of a written means test to determine such ability or inability to pay?

Mr. Nadeau: To be that precise or that accurate would require considerably more time than I think courts are willing to spend on minor offences. That is my impression. If it is a first offence, or the first time in court, and a fine is being proposed, I think the consequences of a small fine are considered not to be that damaging, even if a person cannot pay—unless there is some evidence being presented by the defence attorney, if a defence attorney is there. Consequently, if it is a small fine for a first conviction, perhaps there will not be this dialogue. On a second conviction, or second charge, perhaps the matter would be considered with some concern. If the fine were going to be much higher—\$500 or \$1,000—the matter should perhaps be discussed with the individual, his defence counsel, and

perhaps with the family if the person is living at home. For a student, a \$500 fine may be a real problem.

Senator Robichaud: For a student whose parents are wealthy people, is it a problem?

Mr. Nadeau: Perhaps not. This is what we are suggesting. With an individualized approach to sentencing, and with the assistance of a probation officer, the court, crown prosecutor and judges can perhaps come up with a more suitable sentence that would have, as well as some sanction to it, some consistency in terms of the court's way of dealing with cases. As we can see, even in our province of New Brunswick, judges throughout the province deal with first offences very differently from one part of the province to another. The amount of the fines varies considerably. Consequently, the approach of a particular judge and his crown prosecutor is something that I do not think we are prepared to legislate across the board. If we are going to leave that to the court, and this particular court, the probation officer—who is, I suppose, the social scientist or the person most concerned about the social consequences of fines and imprisonment—should be involved in this kind of discussion. That is a personal bias. I feel that probation people do have a role to play there.

Senator Robichaud: In determining the ability of the individual or convicted person to pay a fine?

Mr. Nadeau: The appropriateness of the fine, and the consequences to the individual and his family, compared with other persons convicted of a similar kind of offence, and trying to maintain consistency for the court's purpose, as well as impose some kind of realistic penalty for the individual. There is wide variation there, as you can well imagine. The ability to pay fines is applicable to all offences where fines are used. The variations are hard to predict.

Senator Robichaud: You have twice mentioned the word "consistency" in your answer. There are discrepancies between and within provinces. You have said that even in New Brunswick there are differences in the imposition of sentences from one part of the province to another. There is a committee in Canada on uniformity of legislation, to have legislation uniform throughout Canada. You refer here mainly to the ages of people. Has that committee ever been approached by any organization to have consistency or uniformity in this respect?

Mr. de Walt: With respect to the juvenile age?

Senator Robichaud: With respect to whether it is 16 or 18, whatever determines a juvenile or adult.

Mr. de Walt: Two committees have been working on this. One is a federal-provincial committee on delinquency services. The other is an interdepartmental federal committee on legislation. I believe the legislation committee is currently drafting some kind of—I do not know whether you would call it a bill—proposal for a new act. That committee certainly sees uniformity of age across Canada as being an important consideration. I think it will come.

Senator Robichaud: You are optimistic. I think it should be uniform throughout Canada. At the top of page 7 of your brief you say:

In summary, it is our view that in the majority of cases of simple possession involving adults, that an absolute or conditional discharge or the imposition of a monetary penalty is the best approach.

How do you distinguish here between adults and juveniles? What should be the difference in the approach?

Mr. de Walt: The reason it says for adults is that the dispositions available to the juvenile court are different. They are embodied in the Juvenile Delinquents Act. Although a juvenile court can do virtually the same things, the terminology is different, the provisions in the Code do not apply, and the record does not apply. A juvenile court record is confidential; it is not a public record. When you say adults, you are referring to Bill S-19, which, in effect, applies only to adults. The only effect it has on juveniles is by virtue of it being an offence, which brings it under the Juvenile Delinquents Act. That is the reason we confine it here to adults.

Senator Fergusson: On page 7 you refer to different kinds of sentences. You refer to the intermittent sentence, which is possible under section 663 of the Criminal Code. At one time I was in another country where they were using this a great deal for juveniles. They thought they were having tremendous success. Is this in use much in Canada?

Mr. de Walt: The intermittent sentence for adults is used quite a bit, but I would say it has not been used as imaginatively as it might be. It is a form of exemplary sentence, again where one does not think in terms of rehabilitation, if I can use that term, but rather of convincing the community that something has been done relative to that offence.

Senator Fergusson: In the country I am speaking of, they considered it rehabilitative because of what they did during the time the person was in jail; and they were letting him out because he could carry on and earn enough money for his family. They considered it was rehabilitative. You do not think it is in Canada?

Mr. de Walt: I would not disagree with you. I think it could be. I do not think it has been used in that way.

Senator Fergusson: I wondered whether we were using it to the best advantage.

Senator Neiman: Mr. de Walt, to go back for a moment to the question of juveniles, one of the inequities, of course, is that in some of our provinces, some young people in the 16- to 18-year-old group are being treated as adults and are being convicted in the adult courts.

I know, from speaking to you and from your opening remarks, that your association is relatively new, and perhaps you have not had an opportunity, as yet, to collect a lot of data on a national basis. I am wondering whether you can give the committee your views on the differences in the sentencing procedures, not only within your own province but also as you see the differences across the country, in relation to cannabis offences. Do you see any great differences in the types of dispositions that are made across the country in relation to cannabis offences?

Mr. de Walt: I might say that one of the difficulties in attempting to speak for probation directors is that our organization is not a formal organization. We see the need for more communication so we can deal with subjects such as this.

From the correspondence, it seems apparent that there are fairly significant differences within certain provinces from court to court, and perhaps fewer differences from

province to province. I can think of one province, for example, where in one city court the vast majority of the offenders are put on probation, a condition of which in many cases is attendance at special lectures; whereas in other centres in that same province virtually no users are put on probation, the usual disposition being a fine. There is a wide variation within provinces as to how persons charged with simple possession are dealt with.

Senator Neiman: Are you discussing the offence of possession, or the whole range of cannabis offences?

Mr. de Walt: I am talking only of possession. Was that your question?

Senator Neiman: That is principally what we are thinking of.

Mr. de Walt: I was confining it to possession.

The Chairman: Might the wide variation be because there are more probation officers in some provinces or centres than in others?

Mr. de Walt: I think it has quite a lot to do with the views of the probation officers serving the court in question, Mr. Chairman.

Senator Neiman: One of your colleagues from another one of our provinces expressed a similar sentiment to yours a while ago, to the effect that he felt that most of the people working in the probation service were of the opinion that only a very small percentage of people convicted of cannabis offences should be put on probation; that for the vast majority it did not serve a very useful purpose to be placed on probation. He felt that most probation officers—and, of course, he could not speak beyond his own purview—are of the opinion that probation should be reserved for the very difficult type of offenders only in this area.

Mr. de Walt: I suppose some could argue that probation should have another function. We have tended to look to probation as providing a service to people who are in need of some kind of support so that they can live in the community without becoming involved with the law enforcement agencies. If there is another function which probation could or should serve, I think it would have to be recognized and staffed accordingly. It could be argued, I suppose, that the courts could place the majority of persons charged with possession on a conditional discharge, with probation, say, of three months, during which time the convicted persons would have to report to a probation officer. That three-month period would not be seen so much as an attempt to rehabilitate the person, but as an opportunity to explore certain alternatives to which his or her attention could be directed. In other words, not so much in the sense of correcting or changing something, but a refocussing. I do not know whether that would be feasible or whether it would be effective.

Senator Greene: A supplementary, Mr. Chairman. It seems to me that you allude to it, obliquely at least, on page 8 of your brief, where you question the applicability of the adversary procedure setting up the whole machinery of the state against the individual in these cases, and you accept the summary conviction procedure as the lesser of the two evils. In your deliberations, did you consider whether some special tribunal, such as a quasi medical tribunal, if you like, should deal with these matters from a current standpoint rather than a penal standpoint?

Mr. de Walt: That was not considered by us, senator. We did not consider that possibility.

Senator McGrand: Perhaps I should have asked this question about ten minutes ago. I think of probation as a means of rehabilitating a criminal by putting him under the care and control of a probation officer who endeavours to keep him within the law. We do not put an alcoholic under the care and control of a probation officer because he is not a criminal; he has a medical problem. The marihuana smoker is in the same class as the alcoholic, and not in the class of the car thief or bank robber. In the case of the marihuana smoker or the alcoholic, it is not a question of the state versus the individual; it is a question of the individual trying to live with himself. Is that not right?

Mr. de Walt: I would tend to agree that he is not in the same class as a criminal who breaks the usual kinds of laws, such as bank robbers, and so forth. However, I do not know whether the marihuana smoker is rightly classified as being the same as the alcoholic. Alcoholism seems to be a medical problem. I am not sure that the majority of marihuana smokers would be in that class.

Senator Sullivan: Why not?

Senator McGrand: They smoke and drink in private.

Mr. de Walt: I think marihuana smoking is more of a social problem than a medical problem.

Senator Sullivan: Oh!

The Chairman: The witness is entitled to his view, Senator Sullivan.

Senator Prowse: I suppose one could start in two or three places, but let us stay with the one we are at right now. What we are dealing with in this legislation is not the guy who is hooked on marihuana, but the guy who has been caught with marihuana. In other words, he has broken the criminal law. Whether it is *mala in se* or *mala prohibita*, I suppose, really does not make an awful lot of difference. What you have been telling us, if I understand you correctly, is that there is no sense in putting him on probation and rehabilitating him, because he may have been a kid who only wanted to experiment for the first time. Am I correct in this?

Mr. Nadeau: Yes. We are suggesting that the majority who come before the courts for simple possession fall into that category.

Senator Prowse: What the legislation is attempting to do, and what I think you are talking about this afternoon, is not how to stop people who are hooked on marihuana from smoking marihuana—because I understand they do not get hooked on it in that way—but what we can do to keep the sanctions of the law from being more damaged than the occasional reefer is going to do. Is this the picture you have of it, of what we are doing here?

Mr. de Walt: Yes, that is essentially our position.

Senator Prowse: What you are really saying is that when you get a kid like this there is not really anything you can do for him on probation, because he has been caught and there is nothing you can do with him that will not cause him more damage than the one cigarette would do, which presumably he was going to smoke merely to find out what it was like.

With respect to fines, I may be wrong, but has it not been the practice for some years now, and is it not required by the court, that if a fine is to be imposed the court can set the fine and then they have to ask the fellow if he needs time to pay it?

Mr. Nadeau: I believe that procedure is followed by most courts.

Senator Prowse: If it is not required, it is the one that is followed in most instances, and I think it is required by the Code. Can you tell me whether it is?

Mr. de Walt: Yes, it is, and that was one thing that I do not think was well covered before. When we talk about the non-payment of fines, it is usually when the person has been given time to pay and has not paid, so any inquiry about his ability to pay comes later; not when the fine is imposed but at a later date.

Senator Prowse: Let us take the case where if a fine were imposed on the individual—perhaps a student who has no job and no income, except what he is able to get from his mother who is working to put him through school, or a wife working to put her husband through school—it would cause hardship to people other than himself. Perhaps he could be put to some kind of inconvenience to remind him of the fact that what he was doing was something he ought not to have done because it was against the law. Can you see some form of probation performing that function?

Mr. de Walt: As a matter of fact, this is a matter of fairly serious concern in all provinces, the developing of alternatives to imprisonment for non-payment of fines. A number of imaginative programs have been developed. A good many involve community work orders of some kind. That is a very general term. It allows the person to in some way pay the fine in an indirect way other than serve time for non-payment. That is really what we are referring to in the last section, although it is not spelled out.

Senator Prowse: Section 48 provides a maximum fine of \$5,000 or \$1,000, and so much for a second offence. If the person were under the age of 23, would there be some use in having a lighter scale of penalty? The British do that with respect to certain sexual offences involving 15- or 16-year old girls. In Alberta a 16-year old boy can be charged with contributing to the delinquency of a 17-year old girl. Not only can that happen, but I have seen it happen, and a sentence of a year's imprisonment has been imposed.

Mr. Nadeau: I think the position as stated proposes a \$500 fine for a first conviction, and that is suggested as a maximum.

Senator Prowse: There is no minimum.

Mr. Nadeau: There is no minimum provided. It seems that the committee is very concerned about the sentencing part that will result from establishing these new penalties. Speaking personally, I believe that such a concern about the sentencing process is very much needed, from what I have seen happening in the courts. I cannot speak for all of Canada, but throughout Ontario and New Brunswick, the two provinces I am aware of, the sentencing practices should be studied very closely with judges, prosecutors, probation people, and with perhaps the public involved, because there is such a wide discrepancy in the way fines are used, in the way alternatives are decided on. That is

what bothers me, the way alternatives are decided upon. Very often it can be the result of a deal between a crown attorney and a defence lawyer; the judge may or may not be a part of it. Very often it does not result in a consistent approach to the administration of justice. One individual, because of the lawyer he happens to have, may get a better deal than another individual who may not have been able to get that defence attorney or has a different crown attorney. At that level, sentencing is a crucial issue. I do not know just how the sentencing process can be established in a way to allow for a more equal distribution of the alternatives that are available to all people who come before the courts.

I personally think that we can establish such sentences as this, but we must remember the amount of discretion that is involved in the Crown's processing of cases and the amount of plea bargaining that goes on. We know that plea bargaining is a part of the criminal justice usage now and we have all accepted it. The sentencing bargaining that goes on is a fact now. What I am suggesting is that there seems to be a need to look at the sentencing as maybe a separate function, or maybe as something important enough that we can take the conviction and ensure that we do have proper safeguards, legal safeguards and so on, to establish a legal conviction; and, on the other hand, there should be some mechanism for determining appropriate sentences, sentences that are appropriate to the individual, to the community, to the whole legal structure, and that are consistent with the legislation that has been worked on so hard by legislators.

Senator Greene: In light of that, Mr. Nadeau, and your concern, which I think is voiced by many on uniformity, and considering that one of the main aspects of this bill is to put this issue under the Food and Drugs Act rather than leave it so completely in the criminal area, would it be useful to have it mandatory within the act that an official of the section of the Department of National Health and Welfare which administers this act and under which these prosecutions will be carried out, would be in attendance at any trial in Canada in respect of cannabis charges, to aid the court in assessing uniformity of treatment in these cases. If we had some one departmental official who was in attendance at each trial, at least there is one point where it is their responsibility to see that uniformity is achieved.

Mr. Nadeau: I could agree with such a process if we had an established philosophy of sentencing that would guide that type of person, plus the courts, in the application of the sentencing, but I do not think we have such a philosophy to provide a guideline. I think consistency is necessary, but consistency not in the type of sanction or not in the specific sentence that is imposed, but consistency in the philosophy of sentencing, if I can put it that way, so that certain factors are considered when imposing a sentence and that it be imposed in a consistent way. Then when you have an individual before a judge, no matter where he is, that judge will be guided by a philosophy of sentencing which will ensure that the individual receives adequate treatment by the court, and that his social factors, personal factors, or whatever, will be taken into consideration at the time of sentencing. For those reasons, consistency is certainly required, but consistency from the point of view of having agreement on a sentence being provided in certain circumstances would not, in my opinion, result in a better application of the law.

The Chairman: We are getting rather far afield. The matter of uniformity of sentences is under study by the

Law Reform Commission and by associations of judges meeting periodically.

Senator Neiman: Mr. de Walt, two different groups from the Toronto area came here representing defense counsel. One group supported your view that summary conviction procedures were good and would assist in the administration of justice and in the disposition of these cases; the other group objected to the summary conviction procedure. My recollection of the rationale was that they like the jury system and the delays which are involved to some extent, because it gives the accused the chance to establish himself in the community and get a job. It also gives the defence and the Crown an opportunity to plea bargain, to go through all these things and perhaps in the long run obviate the necessity of a conviction being registered. In your opinion, is there any real merit in that view, or do you feel that, in fact, the summary conviction procedure is preferable?

Mr. de Walt: It seems to me that it must relate to the penalties and to the offence. If in the case of possession the penalties have been reduced to a fine with no option of imprisonment, then one must wonder whether the long,

drawn-out, expensive process is really required, because it could be a terrible inconvenience and cost to a person charged with possession if he were to be dragged through that whole process.

In my opinion, the bill is inconsistent in that it provides that these offences will be dealt with on summary conviction, and yet, for purposes of the record, it says that they will be dealt with or looked upon as indictable offences under section 52.

Senator Neiman: There does seem to be some inconsistency there.

Senator Prowse: But that, surely, is merely for the purposes of the Identification of Criminals Act?

The Chairman: Honourable Senators, I now thank Mr. de Walt and Mr. Nadeau for appearing and for their help to the committee. The committee now adjourns until next Tuesday, April 22, at two o'clock in the afternoon, to hear representatives of the Association of Chiefs of Police of Canada and the Canadian Bar Association.

The committee adjourned.

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